Chas. Forsyth Edgeworth
Ireland. Courts of Oyer and Terminer and General Gaol Delivery

A REPORT

OF THE

TRIALS

OF THE

CARAVATS AND SHANAVESTS,

AT THE

SPECIAL COMMISSION,

FOR THE

SEVERAL COUNTIES

OF

TIPPERARY, WATERFORD, and KILKENNY,

BEFORE THE RIGHT HON. LORD NORBURY,

AND THE RIGHT HON. S. O'GREADY.

Commencing at Clonmel, on Monday, February 4th, 1811.

TAKEN IN SHORT-HAND

BY RANDALL KERNAN, ESQ.

BARRISTER AT LAW.

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SPECIAL COMMISSION

FOR THE

COUNTY OF TIPPERARY,

BEFORE THE RIGHT HONORABLE LORD NORBURY,
AND THE RIGHT HONORABLE S. O'GREADY.

CLONMEL, MONDAY, FEBRUARY, 4th, 1811.

GENTLEMEN OF THE GRAND JURY.

JOHN BAGWELL, Esq. Foreman,

Sir J. C. Carden, Bart.	Nath. Taylor,
Stephen Moore,	Denis O'Maher,
John Palliser,	John Roe,
Samuel Perry,	John Lawlor,
Samuel Jacob,	Andrew Ryan,
William Baker,	Oliver Leathan,
Henry Langley,	Henry White,
Thomas Going,	P. A. Butler,
Richard Creagh,	J. P. Roe,
Robert Cooke,	William Despard, and
Thomas Prendergast,	B. B. Bradshaw, Esqrs.

THE Grand Jury having been sworn, Lord Norbury addressed them, to the following effect:

" GENTLEMEN,

" You are not surprised that the principal Gentry and Inhabitants of this great County are thus assembled at an unusual period. —After the many atrocities that have disgraced and disturbed it of late, you would have been justly discontented, if the Government had been remiss or reluctant in giving immediate and active operation to the Law, and an opportunity of appealing against reiterated and continuing outrage, to the authoritative and protecting administration of Justice. Notwithstanding that you have been heretofore visited at the regular periods of Assizes, by the able Judges whose wholesome admonitions have been given from this Bench, with a view of reclaiming the licentious spirit of the tumultuous—notwithstanding the many strong and salutary provisions of the Legislature to coerce, punish, and deter public and dangerous offenders—notwithstanding the many painful examples of capital punishments inflicted on unhappy delinquents by the sentence of the Law—notwithstanding the alarming burst of a late

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rebellious insurrection, and the multitude that fell victims to it—notwithstanding the proud and manly exertions of the loyal inhabitants, who then vanquished and will for ever subdue the destroyers of public safety and domestic comfort—notwithstanding the restoration of general tranquility by the wisest measures of Government—notwithstanding the merciful magnanimity of a gracious and good Sovereign, and temperate Legislature, in giving pardon and amnesty to a deluded infatuated rabble, we still have cause to lament, that insidious and wicked men have continued to seduce the unwary, and to plunge into dangerous associations, under the blasphemous sanction of oaths, the unhappy men whose cases have caused you thus to be assembled.—'Tis wonderful, how the characteristic credulity of the lower orders still continues to be duped by a few contemptible, depraved, insidious Leaders, who are grown hardened, desperate, and practised in seduction;—but pardon is often ill bestowed upon the desperate.

It has been observed by the historian of a former period, that no grace will quiet such restless minds. Men, long inured to rapine and sedition, contract inveterate habits; no experience of miseries, which attend their crimes, and ruin which constantly follows, can deter them from attempting new mischiefs; but with your co-operation, and that of the virtuous and spirited men of this county, we shall give new and warning proofs, that this insurgent spirit shall be put down by the arduous efforts of the law, without departing from the benignity of its principles. In conversations with some of the magistrates of this county, complaint has been made, that their power has been lately curtailed by the expiration of the act, commonly called the Insurrection Act. It is not becoming to impute culpable omission to the Legislature; but I trust that in its wisdom the revival of that law, which was found salutary in its practice, and which I never heard of being made bad use of, may again enable (so long as insurgents exist) the magistracy and resident gentry to protect the innocent from that nocturnal outrage which has so deeply injured the character, credit, and comfort of the country. But let us not complain of the want of legislative provisions. Although I hold in my hand so alarming a calendar of men incarcerated in your gaol, under the heaviest accusation for their various imputed crimes, I have also the statute-book before me, where various laws still exist, that are sufficient to meet and to punish those crimes which, on due investigation, may be sanctioned by the authority of your finding indictments framed upon them. Upon looking into that copious catalogue which lies open before me, in Mr. Ball's most excellent index to our statutes, I find classed under the head of Riot and Assemblies, no fewer than ninety-eight distinct provisions, from Henry the Seventh to this time, to control the prevalent mischiefs, as occasions arose for the necessity. For it has been well observed by the wisest men and the most humane Judges, amongst whom was Sir Matthew Hale, that from the vices and infirmities of men, the variety of unforeseen events, when offences grow dan-

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gerous, frequent, and enormous, so as to be dangerous to civil society, coercion and punishment must be provided to deter the guilty and protect the innocent; and such were the occasions that lately gave birth to the Insurrection and Convention Acts. I wish that the first had not expired, and that the other was better recollected and more duly respected, when the spirit of dangerous sedition and illegal cabals and associations, insult society, and openly defy the provisions of this salutary law.

In this county the parliamentary functions of Caravats and Shanavests have promulgated the laws, have levied contributions and forces, and as the natural produce and effect of their councils and energies, they have excited the standard of their terror, and the plunder of arms is the audacious practice;—nocturnal and barbarous outrage has been let loose, and a paltry banditti, of the lowest description, and insignificant when openly opposed, has inflicted the cruellest torture on the peaceable and unprotected cottager—and, shameful to tell, the native chastity of the females is universally violated by licentious brutality. The cries of the distracted mother and the tortured father, the shrieks of the violated daughter, have pierced the attentive ear of Government;—that Government calls for your co-operation, and I tell you that the law is strong enough to assist you.

Gentlemen, the statute which I call your attention particularly to, is the 15th and 16th of the King, a law to prevent tumultuous risings, commonly called the White-boy act. Some of you are not old enough to remember its history;—I lament to tell you, that it took its rise from the repeated outrages that disgraced this county at the commencement of his Majesty's reign. Foreign emissaries were sent here to seduce and distract, as a prelude to an intended invasion by France. The French fleet was vanquished and destroyed by the invincible superiority of the British navy, and the insurrection was crushed by the valour and virtue of our country, which will for ever be predominant. The peccant matter still infested our quiet, which gave occasion to the law I allude to, and which has now existed for near half a century, and gives ample power to the magistracy, and to the administration of justice. The multitude of cases that have been adjudged upon it are familiar to your experience—the number of sentences that have been awfully pronounced from this bench, should have been as a warning voice to the guilty.

[Here the Judge read extracts from the preamble and provisions of the statute, and then observed:]

You see, Gentlemen, how comprehensive the law, how ample the powers to the magistrate, and how great the remuneration to the injured and their families, at the grievous expense in taxes which must be levied from the offending county. I do not address you with cold formality; I speak to you with undisguised freedom. Though most of you are firm, active, and virtuous, there are some who, from supineness, mistaken lenity, or most criminal favoritism to delinquents, recommended, concealed, or partially protected, who have much to answer for, and have been actuated by the shameful

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and criminal seeking for popularity with a rabble, at the expense of the peace and good order of society. This will not do; let me implore you to lay aside all distinctions and divisions of party; if not, the outrageous and the tumultuous will drive you from this beautiful and delightful country. Your credit with other countries has been injured—you are placed in high and eminent situations—you can view and investigate the situation of your country—you have an arm strengthened by the law to drag the offender to justice; and with another arm you can spread a shield over the head of the innocent and unprotected. Make your best efforts with the law against this siege of trouble; if you fail, you must take up arms, and "by opposing end them." You have the finest country and the best constitution in the habitable world; and whilst every other part of Europe has been distracted by anarchy, and finally sacrificed and devoted to the iron tyranny of a military despot, we are come to administer justice, in the sacred temple of the law, where no hasty decision or intemperate conduct shall contaminate your proceedings, or derogate from the pre-eminent virtue of the British constitution. During his Majesty's reign, this country has, for the course of more than half a century, experienced a continued series of grace and favour; all ranks and descriptions of men have been happily embraced, to have a common interest and participation in the blessings we enjoy. The country has increased in wealth and improvement, to an unexampled degree; and within my own time I have the pride to see many of my countrymen raised by their industry and honest exertions to high and honorable rank in the community, and exercising, amongst those whom I address, the proudest privileges of confidential situations. We are all engaged in a common cause, to protect the civil and religious liberties of mankind in this her best asylum. The most valiant of our youth are fighting your battles. We will, with the assistance of Providence, and the vigour of the law, preserve their families, to welcome them home to domestic enjoyments, on their return.

NAMES OF THE GENTLEMEN OF THE PETIT JURY.

1 James Miller,	7 Robert Shaw,
2 John D. Kelly,	8 Daniel Dooley,
3 John Revel,	9 Daniel M'Shane,
4 William Edmonston.	10 Thomas Hayden,
5 Thomas Quinn,	11 Jeremiah Keely,
6 Weldon Jordan,	12 William Keely.

A number of prisoners were arraigned, and indicted, under Lord Ellenborough's Act, for an assault, by firing a loaded gun, with intent to kill, &c. They were also indicted for an Unlawful Assembly, and for assuming the name of Caravat.

Mr. M'Nally, as counsel for the prisoners, moved, that their Trials should stand over till next day, on the ground, that the

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warrant of committal had specified Felony at large, and therefore that the prisoners could not now be ready to take their trials, inasmuch as they did not know, till this moment, with what offences they were charged.

The Court granted the motion.

INDICTMENT.

Andrew Kerwick and *Laurence Dwyer* were then given in charge to the Jury, and indicted for robbing Patrick Gibbons, one of the guards of the Cork mail coach, of two blunderbusses and two pistols, at Grange turn-pike gate, in the county of Tipperary, on the 21st of November, 1810.

Mr. Campbell, counsel for the prisoners, moved to put off their trial, on the usual affidavit, which stated the absence of material witnesses, &c. &c.

The Court refused the motion, on the ground of the insufficiency of the affidavit; which should have stated, that the witnesses were served with Crown summonses. Mr. Campbell offered to examine the bailiffs who served the summonses, *viva voce*.

The *Solicitor General* then addressed the Jury, as follows:

Gentlemen of the Jury,

The prisoners at the bar are charged, by this indictment, with one of those crimes, the frequency of which has made it necessary to speed a Special Commission, at this inclement season, and inconvenient period. They are charged with having robbed, from one of his Majesty's Mail Coaches, upon the King's high-way, those arms which are entrusted to the Guards for the protection of the passengers and correspondence. It will appear to you that the coach was robbed only of the arms, the seizure of which was so exclusively the object of the banditti, to which, as I am instructed, the prisoners belonged, that at the moment of the robbery, they made it a matter of boast, that they had demanded no other plunder. This prosecution is therefore peculiarly called for upon the present occasion, because the offence that has been committed grows altogether out of that passion for arms, which has unfortunately possessed the lower orders of people in this country; which is the peculiar character of almost all the outrages which have taken place; which has generated so many crimes; and which, in its result, threatens the public peace with all the formidable consequences of an armed peasantry, and a disarmed gentry. You will find by the evidence, that the commission of this crime has been distinguished by particular audacity; that the ruffians were numerous; that they conducted their enterprise with considerable skill and address; that they had interrupted the progress of the coach, by chaining the turnpike gate, in a place where it would have been difficult, if not impossible, for the coachman to turn his horses; and that they had contrived an ambush, from whence they could command the object of their attack, without being exposed to the fire of the guards in return. I do not desire further to anticipate the facts of which, I rather wish you should learn from

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the witnesses; and shall therefore proceed to make some observations upon the deplorable situation of this country, and the provisions of those laws which it is the object of this commission to enforce. Such observations I consider it my duty to offer on this occasion; they will apply, I admit, to much more than the merits of this particular trial, and are rather addressed to this respectable County, thus publicly assembled, than to you, Gentlemen of the Jury, in particular.—Suffer me, therefore, to entreat, that if, in the course of my address, I should excite your alarms for the state of this county, that nothing which falls from me may prejudice the unfortunate persons upon trial. Of them you will judge calmly and impassionately, from the evidence alone.—We, who conduct those prosecutions, expect and hope a firm and vigorous administration of justice; we are deeply impressed with a necessity of your danger, and of the necessity of salutary example; but it is also our most anxious desire, that no man may be convicted upon any trial, except upon the most satisfactory and indisputable testimony; and that in every case, where a reasonable doubt of guilt can be conscientiously entertained, the prisoners may have the benefit of it by an instantaneous acquittal. Perhaps it may be thought the less necessary to discuss the nature of those mischievous associations, which have produced, at different periods, in this country so many crimes and so many misfortunes, because his Lordship, in his charge to the Grand Jury, has so fully and so ably traced their history and progress. I cannot, however, forget, that upon several former occasions, the county of Tipperary has been exhorted from that Bench to very little purpose, and I lament that I must add, that the mischief has been suffered to proceed and to gain ground, as if the Gentlemen of this County were altogether insensible of the perils which surround them. Upon former occasions, when the evil was in its infancy, I fear that many men were so infatuated, as to conceive, that by temporising with the disturbers of the public tranquility, they might secure their individual safety in the midst of the general danger. I fear that many indulged a sympathy with the murmurers against those alleged grievances, which the noble and learned Judge has shewn it has always been the pretence of such confederacies to redress. I fear that some persons have folded their arms, and looked on with patient apathy, while the plunder of the clergy, and the collection of tithes, appeared the only object of insurrection. To others the obstruction of the public taxes might appear a venial and justifiable motive for disturbance. In some parts of Ireland, where the people rose against the claims of the Roman Catholic Priesthood, and affected to regulate their dues, many did not foresee that the habit of popular interference could not be confined to any particular object; and if indulged, it would grow into a claim to general superintendance over every thing established. Such, unfortunately, has been the case. Out of the apathy and indolence, or connivance of the gentry, has grown the dominion of the mob.

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From complaining of particular grievances they have now declared war against property in general; they have been suffered to arm themselves—and they threaten to disarm you;—your rents are subjected to the same government which the White-boys, in the days alluded to by his Lordship, claimed to exercise over Tithes and Corn, and the melancholy result necessarily must be, that if the mischief be not effectually checked, the peace and property, and life of every gentleman in the county will be at the mercy of an armed and licentious rabble;—and what an iron despotism is the dominion of the mob?—The tyrannies of ancient and of modern times are comparatively blessings. In such governments, it is the intent of those in power to promote civilization, and advance the arts of society—but the effects of those ruffian legislators, who now affect to govern this country, are calculated to obliterate every trace of culture and improvement, to cut off the sources of public prosperity, and to introduce universal barbarism. What is the first avowed object of these savage associations, to enforce the commands of which you are nightly plundered of your arms? It is the regulation of landed property and its produce—it is the vain and idle attempt to fix a maximum for rent, and to prescribe the price of labour—it is the frantic project to prevent the transfer of property, and to frustrate the exertions of industry:—the nature of things, still more than the operation of positive law, has decreed, that property should find its own level; and it is the first principle in a commercial country, and the first consequence of national prosperity, that property should be in a state of perpetual transfer and circulation. Thus the industry of individuals is rewarded—enterprize and improvement encouraged, unproductive idleness is punished, and the public good is the necessary result. To check this natural progress, to avert this perpetual motion in the great machine of human society, no Legislature, however enlightened or powerful, has been ever rash or strong enough to attempt; and what the wisest men and best of governments would tremble to undertake as impracticable, and would reject as undesirable, these mob legislators and banditti reformers have announced as the law of their association, and enforce the observance of that law by torture and by murder. Land, say they, shall never rise, and property shall never change its possessor. To all ranks are their mandates equally directed, to the rich and to the poor. To the gentleman of landed property they proclaim that the land, which his ancestor had demised 30 or 60 years before, must not rise, upon the expiration of his lease, or must only rise according to their arbitrary standard. Though the price of every article around him has increased four-fold, by a fluctuation in value, which he cannot controul, yet the value of his land must remain stationary; and this is not all—if the former tenant were a beggar or a knave, he must be continued; no honest or industrious man, however willing to succeed him, and to benefit the property, by his capital or labour, is allowed, upon pain of death, to be a competitor with

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the old proprietor. The consequence is, that the land must remain unset, as in several instances it is, to the ruin of all individuals concerned, or the Landlord must submit to the terms thus arbitrarily dictated to him. This infliction is not confined to the estated gentlemen, but visits the laborious poor. The labourer must not take, and the master must not pay, any wages, but those which the reformers may prescribe—nay, the labourers must only belong to such districts as are specified by the insurgents, who, in the part of this system, foment national and provincial, and almost parochial antipathies amongst the poor. It is not long since unfortunate labourers from Kerry, or some other distant counties, in which the harvest is late, have been forbidden, upon pain of the most dreadful punishment, to offer their labour here in the earlier season; and in many instances, their intrusion has been atoned for by barbarous tortures and cruel death. Another part of their system has been to denounce, as public delinquents, all persons of the lower order, who contribute, in any degree, however humble, to the administration of justice, civil or criminal; and not only the process server and the tithe valuator is proscribed, but every witness, who comes forward in aid of the laws, is stigmatized by the odious appellation of Informer, and devoted to vengeance and to slaughter. This is a very faint outline of that dreadful system, which has gradually grown almost to maturity out of that impunity which has too often encouraged the baneful confederacies, that at different periods, as the noble and learned Judge has so justly observed, have infested and disgraced this country.

Such is the system which the rabble seek to establish by the plunder of arms—such are the dreadful consequences which must ensue, if such plunder be not checked—such is the prospect which opens so formidably upon both the rich and the poor. It is no longer any thing but an idle speculation, whether these miscreants are encouraged by emissaries from the foreign enemy or domestic traitors. Probably the origin of the present disturbances cannot be traced to such high sources—it little matters how that is; it is perfectly certain, that if at a future day rebellion should again raise its head in the country, or the French should unfortunately effect an invasion, either the one or the other would find well prepared and willing auxiliaries in the armed peasantry of the county of Tipperary, habituated to crime and familiarized to blood;—in the mean time it is equally certain, that they are rapidly reducing this fine district to a state not to be endured in a civilized country, a state of things too well illustrated by the frightful catalogue of crimes traced upon that calendar now before their Lordships. For the purpose of checking the mischief, if it be possible, this special commission has issued, to enforce the execution of those laws, which, in other counties, upon former occasions, have been found abundantly adequate to its suppression;—why it should be the character of this incorrigible county, that those laws, elsewhere successful, should be supposed insufficient here, I cannot conjecture—

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sure I am that they cannot have been well understood, or if so, they have not been zealously or faithfully executed.—I am drawn to this subject, by what has fallen from the noble and learned Judge in his charge to the Grand Jury; from which it appears, that since his arrival in the county, several gentlemen of consideration have lamented to him the repeal of the insurrection act, and attributed the disturbances of the county to the want of those domociliary visits which that statute authorized—I do not doubt that the opinions of those respectable persons are entitled to high consideration —possibly it is mistaken.

I shall not so far forget the place in which I am, as to undertake such a topic. I feel myself bound to presume that all the acts of the Legislature are founded in wisdom, and to recollect that we are assembled here, not to lament over repealed laws, or to speculate upon their revival, but to execute and enforce the laws that are in existence.—This is not a House of Parliament, or a place for political discussion.—It is a Court of Justice, in which the law is to be administered; but when I hear the misfortunes of the country attributed to such a cause, I cannot avoid remarking, that they are unhappily of a much older date than the repeal of the insurrection act—that that statute, though upon the book, has never been acted upon since the rebellion; and that the laws at this moment in force have, since that period, been found adequate to the suppression of many such commotions as now afflict this country.—I can speak from much experience upon this subject; my learned friend, Serjeant Moore, now at my side, whose services to the public upon such occasions can never never be overvalued, has witnessed with me memorable instances, in which a faithful and vigorous execution of those laws has been attended with the fullest success.—He remembers when the entire province of Connaught, with the exception of one County, and when two Counties in the North-west circuit were overrun by the insurgents, called Threshers; upon that occasion the disturbance was so violent and general, that the King's Judges, upon a Special Commission, could only move through the country under the escort of a troop of dragoons;—the meetings of the people had been so frequent, numerous, and audacious, even in the open day, and the outrages so many, that it was doubted, for a time, in the town of Castlebar, whether the execution of six convicts could with safety take place pending the Commission; yet in the short space of less than a month, that Commission visited five Counties, and by the firm administration of the laws, supported by the cordial co-operation of the Magistracy and Gentry, such was the triumph of Justice, that the insurrection dissolved before its influence, and from that period (the year 1806) until this hour, so perfect has been the tranquility then established, that the Crown Solicitors for those counties have never had one case of public disturbance to prosecute.

We remember the more recent instance of the western part of the county of Limerick, which stretches along the Shannon, and the

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entire of the county of Kerry, having been convulsed by similar outrages, almost to insurrection, yet those laws, supposed now to be ineffectual here, were executed there, under the auspices of one of the learned Judges now presiding, and with such success, that those districts have ever since (a period of more than two years) enjoyed perfect tranquility; and if a small portion of Limerick remains at this moment partially disturbed, I am sorry to be obliged to state, that it is that Eastern limit which owes its unwholesome state to the infectious vicinity of this unfortunate and incorrigible county.—I cannot therefore but hope that those gentlemen who have despaired of the laws which exist, have done their best to understand them and execute them—I hope that they are not palliating their own inactivity and negligence, by criticising the acts of the Legislature and the Government; and I trust that every man, who finds fault with the laws of his country, is able to lay his hand on his heart, and assure himself that he has done the utmost to carry them into execution;—until then, let him not think of stronger remedies.—An ancient fable tells us, that when a certain man had got his waggon wheel into a rut, he looked up at once to the higher powers, and prayed to Jupiter or Hercules for assistance;—the God gave him not assistance but advice—my friend, put your own shoulders to it; he did so, and with effect.—I say to you, gentlemen, with great respect, put your own shoulders to this business, and you may be certain of success.—Every one must admit, that as long as it is possible to do so, the public tranquility ought to be maintained in the manner most congenial to the principles of the constitution. I can very well conceive an extreme state of things, in which perhaps stronger measures than the insurrection act may become necessary—we all remember such a season, and we must implicity rely upon the wisdom of Parliament for such enactments, either of old or new laws, as future circumstances may require; but I cannot believe that the code of laws principally to be acted upon, during this Commission, can have been well considered by those who, in the present state of this county, despair of its efficacy.—It is not perhaps sufficiently recollected that the White-boy act, though so old as the year 1776, is by no means any part of the permanent law of the land; it is an occasional code, which sleeps upon the Statute Book, until called into activity by the crimes of some particular district; and this is so peculiarly the case, that no one provision of it can be applied or acted upon in a Court of Justice, unless there be previous proof that the County in which the offence be committed, was at the time in a state of tumult, produced by unlawful associations; so that at this instant, out of the 32 counties of Ireland, there are more than 25 in which that statute is not the law. Its provisions are so severe, that the mere act of unlawful assembling, without the commission of a single act of violence, is itself a high misdemeanor, punishable at the discretion of the Judge with imprisonment, pillory, whipping, or other corporal punishment; but almost every act, which is possible for men, once unlawfully assem-

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bled, to commit, even many that by law are mere trespasses, and some which are not, such as the delivery of letters or messages, in furtherance of the association, are all made capital felonies, and death is the common punishment of all—and in all such acts, not merely the principals, but all such as assist, abet, or succour them, are subject also to capital punishment, without benefit of Clergy.—This statute is not confined merely to the punishment of crime, when prosecuted, but is calculated to assist the Magistrate in bringing criminals to justice; if he has reason to suspect that any person can give him information of an offence committed, he may summon him, to be examined, and to be bound in a recognizance to prosecute; and if he refuses to submit to examination, or to be bound in a recognizance, the Magistrate may commit him to prison, until he shall submit to such examination or recognizance.—The Magistrate too is authorised to appreprehend, disperse, resist, and oppose, all persons concerned in these unlawful acts, and to command all his Majesty's subjects to assist him in so doing; and if, in apprehending, dispersing, resisting, or opposing such persons, any person be killed or maimed, the Magistrate, and those assisting him, stand indemnified from the consequences. Under this strong authority did the Sheriff of the County of Kilkenny, in the last autumn, and the Rev. Mr. Hunt, a Magistrate of the same County, in a late instance, act, and by doing so, gave a considerable check to that spirit of mischief and outrage which visited that county from this in the course of last year. I am sure that every Gentleman who hears me is anxious to discharge his duty; but you must excuse me, if I say, that on such extraordinary occasions, ordinary exertions are insufficient. Such conduct as Mr. Izod's, and Mr. Hunt's, must be adopted. I admit that it is an arduous and grievous service, and what no one can be expected to undertake, unless in the hopes of establishing permanent tranquility. It is attended with danger, fatigue, privations, and unpopularity; but all these must be encountered at such a moment, and no Magistrate must conceive that he discharges his duty, by sitting in his office, as in common times, taking informations and signing mittimuses; he must do more; he must not wait for information, but seek it, and pursue it, and when found, act upon it; and if any man found himself too old, or not sufficiently robust, or too timid, or too prudent, for such an energetic discharge of duty, it is better he should resign his situation at once, than disappoint the pubiic by retaining it, and propagate the example of his own inactivity. The Government of the country is, as you all well know, vigilant and active in co-operating with you. I well know that a considerable portion of the time of his Majesty's Government in this country has of late been devoted to the peace of this unfortunate county; every Magistrate that chose to act has been in correspondence with that Government; and I well know, that the public purse, and the public force, have been liberally distributed to promote the peace and justice of this Country. I speak in the hearing of the general

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officer who knows the fact, that there is at this moment a greater and more disposable force in the county of Tipperary, than was in the Rebellion of 1798. What then is necessary? You have strong laws and an active Government; but these are all unavailing, without your own exertions; I mean no single, insulated, and mutually contradicting efforts, but cordial and unanimous co-operation.—If you are divided yourselves into factions and parties, you thus prepare to submit to that mob which insults the justice of your country.—If partiality and favour should obstruct justice—if one Gentleman, from tenderness, will not bring forward a prosecution—if another, from partiality, will screen an insurgent—if a third, to court a filthy popularity, will compound a felony—if some men, from hostility to others, will thwart a prosecution instituted by a rival—if others conceive it an insult, that an outlaw under their protection and sanctuary, should be made amenable, and should, in emulation of the feudal seignories, reckon the felons upon their domains as part of their possessions. If such things should be, then indeed would I despair of your county, and think, that neither the existing laws, or any other that could be enacted, would be sufficient to protect you against yourselves. But confiding as I do in the high character and respectability of the Gentlemen of the County, I will not suffer myself to doubt that the present commission will be productive of salutary and beneficial examples, and that it may not be necessary, at any future period, to resort to any of those strong proceedings, which, unless in cases of the strongest necessity, every one must deprecate.

WITNESSES ON THE PART OF THE CROWN.

Patrick Gibbons, examined by Mr. Serjeant Moore.

Q. What employment are you in?—A. I am one of the guards of the Cork Mail Coach.

Q. Were you in that employment at any time in the month of November last?—A. I was.

Q. Did you meet with any obstruction in your travelling, at that time?—A. I did—at Grange turn-pike gate, about 3 miles and a half from Cashel.

Q. Who keeps that gate?—A. I don't know the man's name—we were going to Dublin.

Q. What persons had you in the inside and outside the coach?—A. Four inside passengers—Thomas Willet, the coachman, and my comrade guard outside.

Q. What was the first thing that obstructed you?—A. The turnpike gate was shut when we came up to it; it was tied with a hemp rope on one side, and an iron chain on the other.

Q. Did you hear any voices?—A. Yes; there were nine or ten speaking at once—they demanded our arms to be delivered to them. I had a blunderbuss and a case of pistols.

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Q. What answer did you give?—A. Dunn, said I to my comrade, we are attacked, and stand in your own defence.

Q. Did any person speak to you?—A. Yes; several said that they did not want to rob the Mail; but the arms they must get, or they would kill the two guards.

Q. Did any person come forward?—A. No; but I saw four or five muskets presented from the corner of the house.

Q. Was there a dwelling-house?—A. Yes; the turnpike-man's house.

Q. What did you do?—A. I told them to come and to give me a fair shot, and if they afterwards killed me I would forgive them; then I put the blunderbuss on my knee, and I kept my eye on the corner, and said I would not give up my arms until I was killed—there was one shot fired.

Q. What hour when the coach was stopt—did they get the arms?—A. Yes; after a long contest; Counsellor Townsend put his head out of the coach, and desired us to give up our arms; the party said they would only give me five minutes to live, and four of them had expired—We then gave up our arms, as we were directed, to the coachman—I gave him a blunderbuss and a case of pistols.

Q. What did the coachman do with the arms?—A. He left them on the wall, as he had been desired.

Q. Did you see the arms taken away?—A. I did.

Q. Did you make any delay there?—A. We continued as long as we might have travelled three miles.

Q. Do you see any person in Court that you can swear was among the party?—A. Yes; there is a man there, Dwyer, (pointing to one of the prisoners); I swear he was among the party; I saw him three or four times; I took him to be the turnpike man's son; I have no doubt whatever of his being one of the party; we had the light of the moon, and the light of the coach lamps; I complained to the officer commanding that we had been robbed.

Cross-examined by Mr. Campbell.

Witness said, he had been guard of the Mail-coach since March last—he had followed the trade of a weaver—knew none of the gentlemen in the Mail-coach but Counsellor Townsend—he was angry with himself for not having made use of his arms—heard the Prisoner was servant to the Turnpike-keeper—had often seen him employed at the gate, pitching dung—he heard talk of Mrs. Mills being the wife of the Turnpike-keeper.

Thomas Willet, examined by Mr. Prendergast.

Q. In what employment are you?—A. I have been coachman to the Mail for about six months.

Q. Were you on the Cork Mail on the night it was stopped?—A. I was.

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Q. At what hour were you stopped?—A. At about half past one.

Q. What kind of night?—A. It was a very fine moon-light, and we had the coach-lights.

Q. How were you stopped?—A. The turnpike-gate was fastened.

Q. What did you do?—A. I called out to the guard to stand to their arms—in a minute after, we heard several voices cry out, deliver your arms.

Q. What did you do then?—A. Stood there—There was one shot fired.

Q. What happened after?—A. I came round to the guard, and said, what shall we do?—we must fight them, or we must die. I heard a great number of voices, and saw their muskets pointed by the corner of the paling of the gate.

Q. What happened after that?—A. The guard said, in the honour of God, lads, open the gate and let us quietly pass; one of them replied, in the honor of the devil you shall not go till you give us your arms—we will take you off your perch, if you don't deliver up your arms; they kept behind the gate during this conversation, which lasted about a quarter of an hour.

Q. Were the arms given up?—A. Yes; two blunderbusses and a case of pistols.

Q. Turn round, and see if you see any person of that party who was there.—(The witness indentified Kerwick, by putting the crier's rod over his head, and saying that he knew the prisoner to have been one of the party that robbed the guard of their arms.)

Q. Did you see the prisoner at any time before at the gate?—A. I saw him constantly there—he had nothing in his hand on the night of the robbery but a kind of a stick—I saw one of our pistols with him after we had laid them down on the wheel.

Q. by Lord Norbury—How soon after did he take it up?—A. Immediately.

Q. Did you hear Kerwick, the prisoner, say any thing?—A. Yes; he said that if we would say we were robbed, he would take our lives the next time we came the road. We gave information of the robbery to the serjeant of the guard at Littleton.

Nothing in favour of the prisoners arose from the cross-examination of this witness.

Serjeant Sherlock, examined by Mr. Pennefather.

Q. At what hour in the morning did you receive the information of the robbery of the mail-coach?—A. A little after six. We surrounded the turnpike-house, and then went into it. When I went into the kitchen, and saw Anne Kirwan and the prisoner, I asked was there any men in the house *but themselves?* The girl said, there was an old man in that room, and, on going towards the room, Kerwick said, there is a little boy there; but no other man in the house.

Q. Did you go into the room?—A. Yes; I found the old man and

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the boy, and another man lying in the bed with his clothes on—I saw him put on his shoes.

Q. In what state were his shoes?—A. They were freshly wet and dirty.

Q. Turn round, and look if you see him.—A. That is he, (pointing the rod to the prisoner Dwyer).

Cross-examined by Mr. Campbell.

Nothing material arose.

Samuel Jacobs, a Magistrate, examined by the Solicitor General.

Q. Do you recollect when the mail was robbed?—A. I do.

Q. Was the country in a disturbed state at that time.—A. So much so, that I wrote to Government to establish barracks; the peace of the country was materially injured, by parties holding nightly meetings, and taking up arms.

Here the prosecution on the part of the Crown closed.

PRISONER'S DEFENCE.

WITNESSES ON THE PART OF THE PRISONER.

John Mills, examined by Mr. Campbell.

Q. You are keeper of the turnpike gate?—A. I am.

Q. Do you know the two prisoners, Kerwick and Dwyer?—A. Yes. Kerwick was in my employment, and Dwyer was a labouring man whom I hired occasionally. Kerwick received the toll of the gate, and I used to pay Dwyer 5s. a week as a labouring man.

Q. How long was Dwyer in your employment?—A. Seven or eight months. Kerwick lived with me for four years.

Q. How did Kerwick conduct himself?—A. I found him always just and honest.

Q. Have you any reason to know that you and your family were obnoxious to the common people of the country?—A. Yes. In the month of September last there was a gun and a pistol taken from me.

Q. Did they take any property?—A. They did: they broke my desk, and took away all my papers; they said they would *put the tythe business under foot.*

Q. Did you, since that period, sleep in your house?—A. I did not; they threatened to shoot me.

Q. Whom did you leave in your house?—A. I left the prisoner Kerwick, and a man of the name of Cummins?

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Q. Was your wife in the house?—A. She was, and two servant maids, and my father, an old man of 96 years of age.

Q. Did you hear of the robbery of the Guards of the Mail Coach at the turnpike-gate?—A. I did, on the next morning, when the army came; they sent for me—it was then about half an hour after day-light—the prisoners might have gone away from the army if they liked.

Here the Court ordered the witness, Serjeant Sherlock, to be called.—He said, that the prisoners were in close custody from the time of his surrounding the house, and that they could not have escaped.

Anne Mills, examined by Mr. Campbell.

Q. You are the wife of the last witness?—A. I am.

Q. Do you recollect the night when the Mail-coach was attacked?—A. I do.

Q. What was the first thing that occurred to your attention?—A. I thought the mob were coming to attack my own house, and to murder me, as they had done before.

Q. When you heard the noise, did you say any thing?—A. I did.—I called my girls, and desired Mary Ryan to light a candle—I then went into where the men were, and I pulled them by the hair of their head, Kerwick and Dwyer—They jumped out of bed, and took up pitchforks and shovels—they had no other weapons in the house.

Q. Was any thing done with the feather bed?—A. Yes—it was put into the window to stop the balls.

Q. Did you hear the persons who attacked the house say any thing remarkable?—A. I heard the robbers crying out, let every one be on their own post, and at the same time they fired a shot.

Q. Did this happen before the Mail Coach came up to the door?—A. It did.

Q. Did you see any person?—A. I did not; I watched my boys so close, because my life was in their hands.

Q. Did you move any other part of your furniture?—A. Yes; we put a large kitchen tub against the street door, and the —— in the parlour window.

Q. From the time you first heard the noise, were those two men, Kerwick and Dwyer, outside your door?—A. They were not.

Cross-examined by Mr. Serjeant Moore.

Nothing of consequence arose from the cross-examination.

Mary Ryan and *Daniel Cummins* corroborated the evidence of the two last witnesses. During their examination, Serjeant Sherlock and the guards of the mail-coach were called up again, for the purpose of discrediting their testimony; and though a considerable time was employed in examining and re-examining these wit-

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nesses, yet nothing of consequence occurred, to weaken the effect of the evidence given on the part of the Prisoners.

James Murphy was examined as to the characters of the Prisoners. He said he knew Kerwick for four years past, and that his general character was that of an honest and correct young man—he never heard any thing laid to his charge.

Rev. *James Slattery* said, that he was Prisoner's Parish Priest; that he had known Andrew Kerwick while he was in the service of John Mills, and he never knew a young man of better conduct or character; he said it was his business to watch over them, and, he trusted to Heaven, that he believed them as innocent of the crime of which they were charged as he was himself.

The Prisoner closed his defence.

The CHIEF BARON ordered the witness Gibbon to be called up again, to explain a material variance which occurred between his evidence, as given this day, and the facts stated in his information before the Magistrate;—in the former, he was only able to identify Kerwick; in the latter, he had sworn positively, that he had known the two prisoners Dwyer and Kerwick. On his re-examination, he said, that he thought they had both been the sons of the man who kept the turnpike.—This was a circumstance which could not fail to excite a reasonable doubt in the minds of the Jury.

Lord NORBURY charged the Jury, and most minutely recapitulated the whole of the evidence. The only question for their consideration was, whether they would believe the evidence given on the part of the Crown, or that on the part of the Prisoner.

The Jury, after deliberating for an hour, returned their Verdict —*Not Guilty.*

TUESDAY, FEBRUARY 5th.

James Kitchen was indicted, under Lord Ellenborough's Act, for firing a loaded gun at John Sauce, with intent to murder him.

WITNESSES PRODUCED ON THE PART OF THE CROWN.

John Sauce, examined by the Solicitor General.

Q. Do you know James Kitchen?—A. I do.

Q. Turn to the bar, and point him out to the Court and the Jury.

(Witness put the Sheriff's rod on the Prisoner's head.)

Q. Do you recollect having been travelling in the month of October last?—A. I do—it was on Sunday, I believe on the 26th October—my wife was riding behind me.

Q. Did any thing happen to you?—A. I was riding home, and

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there was a shot fired—my wife called out to me to turn back, and save my life.

Q. Do you know the man who fired the shot?—A. No; but a man came over the ditch out of a field, and said his name was Sheamus Bury. I asked him what was his meaning for firing at me; he made no answer at all, but said his name was Sheamus Bury, on his own ground, and he cared for no person. The shot was fired at the distance of 60 or 80 yards; there were more than five persons present, but can't tell whether it was from among them that the prisoner came; he heard a gentleman speaking to the prisoner, and saying he would have him; the prisoner replied, that his name was Sheamus Bury, on his own ground, and he cared for nobody.

Mr. *Mac Nally* said, as the witness had given no evidence to sustain the indictment, he would not ask him any questions.

Denis Fine, examined by Serjeant Moore.

Q. Do you know John Sauce?—A. I do.

Q. Were you in his company on the 29th October last?—A. Yes; I saw him and his wife riding on the road on one horse.

Q. Did you hear a shot fired?—A. Yes.

Q. Who fired it?—A. James Kitchen.

Q. Put the rod on his head (witness identified the prisoner).

Q. What direction did he fire the shot?—A. Down the road against him.

Q. What arms had he?—A. I saw him put his hand in his bosom, and bring out a pistol.

Q. How far were Sauce and his wife off?—A. About 15 or 18 yards.

Cross-examined by Mr. Mac Nally.

Witness could not say whether the prisoner fired at Sauce—he could not tell that the prisoner acted maliciously—he did not hear them speaking together, after firing the shot he went inside the road—he could not swear that it was not 40 yards distance, but believed it from 15 to 18.

Mr. Serjeant *Moore* observed, that the lawless banditti of this country shot at persons without assigning any cause.

Mr. *Mac Nally* replied, that perhaps they had had a peculiar respect for him; he had passed through the country perfectly safe, and, he had no doubt, that they would suffer him to repass to town unmolested.

Margaret Sauce, examined by Mr. Pennyfather.

The witness could not speak English—and, after the interpreter was sworn,

Mr. *Mac Nally* requested their Lordships to give special directions to him, (the interpreter) to give a literal translation of the

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answers of the witness. He (Mr. Mac Nally) recollected a cause, tried at Waterford, where three innocent men were nearly convicted, on the false translation of the witness's answers.

This caution of Mr. Mac Nally's turned out, in the course of the examination of Margaret Sauce, to be essentially necessary; as he detected the interpreter, on the suggestion of Mr. Kernan, in giving a much fuller answer to a question, than was given by the witness.—It did not appear that the interpreter had done so intentionally.

The evidence of Margaret Sauce is not material, as it did not sustain the indictment, but was a repetition of the same story told by her husband.

Prosecution closed on behalf of the Crown.

Mr. *Mac Nally* did not think it necessary to examine witnesses.

The CHIEF BARON charged the Jury briefly in these words:

"Gentlemen of the Jury—you must acquit the prisoner; there is not a tittle of evidence given to sustain the indictment. I have no doubt that the act of the prisoner was a most wicked and abominable outrage; but I cannot suffer a case to go to you, without making this observation, that, in my opinion, it does not come under the act, called Lord Ellenborough's act, and therefore it is your duty to acquit the prisoner accordingly."

The Jury, therefore, acquitted the prisoner.

SAME DAY,

David Lamy was indicted, under Lord Ellenborough's act, for firing a gun, loaded with ball, at George Moore, with intent to kill him.

WITNESSES ON THE PART OF THE CROWN.

George Moore, examined by the Solicitor General.

Q. Do you know David Lamy?—A. I do.

Q. Turn, and see if you observe him in Court—(Witness identified him.)—Do you recollect the 4th of September last?—A. I do—I was in the parish of Ballybacon on that day—Arthur Malowney and John Hewson was with me.

Q. What were you doing?—A. Valuing tithes.

Q. Did you see any persons come to your party?—A. I did—two.

Q. Did you know them?—A. David Lamy, the prisoner, was one of them.

Q. Had both those men arms?—A. They had.

Q. What arms?—A. One had a short piece, and the other had pistols.

Q. How near did they approach you?—A. Within about 12 yards;—they desired us to stand, and presented their pieces.

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Q. What did you see after that ?---A. One of them came up, and demanded our books---Lamy stood at the present, while the other demanded our books. We gave them our books; they then swore us never to go back, to value tithes, to the parish of Ballybacon, nor to follow any business of the sort. They then searched our pockets, desired us to go off, and after going some distance, one of them fired at us.

Q. What distance had you then gone?---A. It might have been 50 yards; one shot only was discharged at that time.

Q. Did the shot take effect?---A. Some of the slugs were received by Malowney on the back of his head.

Q. After the first shot, did you see any more of these men?---A. Yes; they followed us a second time, and in four or five minutes they came up to us--they desired Malowney to stand where he was--I was a few paces in front; when they came up to me, they put me on my knees to shoot me.

Q. When you were on your knees, did they do any thing?---A. Yes; Lamy came up, knocked me down with his piece, and when I was down, stamped on my body.

Q. Were you able to get away?---A. I was severely bruised and cut.

Q. What happened after?---A. When we got up from our knees, they desired us to walk off; and we had gone about 70 yards, when another shot was fired from the same direction.—I received three or four of the slugs in the cape of my coat, and some in my hat.

Q. Do you know where Hewson is now?—A. In Artfellen—Malowney is dead and buried.

Q. *(By the Chief Baron)* Can you say who fired the shot, which hit the cape of your coat and hat?—A. No, my Lord.

Solicitor General resumed.—Q. Do you know how Malowney came by his death?

Mr. *Mac Nally* objected to this question,—Malowney having been killed after the transaction laid in the indictment.

(The Chief Baron thought it was not legal evidence.)

The cross-examination was not material.

Col. Bagwell, examined by Serjeant Moore, as the Magistrate who took Malowney's examination, previous to his death.

Q. Did you know a person of the name of Arthur Malowney?---A. I did.

Mr. *Mac Nally* begged to make a preliminary observation, and to ask the Colonel one question.

Q. At the time you took Malowney's information, was the prisoner Lamy present?---A. He was not.

Mr. *Mac Nally* then insisted, that, under the statute of Philip and Mary, the information, in order to become legal evidence,

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must not only be before a Magistrate, but before the party on his trial.

The *Solicitor General* contended, that that part of the act alluded to, had been repealed by several subsequent statutes; and cited the case of the King against Flin and others, for the murder of Thady Lavin, tried at the Special Commission, held at Castlebar, before Lord Chief Justice Downs, and reported by Mr. Ridgeway.

The court over-ruled the point made by Mr. Mac Nally---Lord Norbury thought it a monstrous position.

Mr. *Mac Nally* said, that where so many great guns were brought down against the prisoners, he thought he might be indulged with an explosion from his pocket pistol, "*in favorem vitæ.*"

Here the *Clerk of the Crown* read, as evidence, the examinations of Mahowney, taken before Col. Bagwell. The facts stated, so exactly corresponded with the evidence given by the first witness, that it is not necessary to state them.

Dr. *Nelligan* gave evidence of Hewson's ill state of health, and being unable to attend as a witness.

Prosecution closed on the part of the Crown.

WITNESSES ON THE PART OF THE PRISONER.

Henry Lewis, examined by Mr. Mac Nally.

Q. Do you know the parish of Ballybacon?---A. I live in it---I recollect the day when the shot was fired---I was out with Lord Donoughmore's dogs---I was passing down the side of a hill when I met the prisoner, making a turf stack---it was about 3 or 4 miles from where the shot was fired.

Laurence Shea proved an alibi---and corroborated the evidence of Lewis.

Counsel for the Crown, in order to discredit the evidence given by the two last witnesses, produced

J. Clutterbuck, Esq. He said, Lewis, the first witness, was a man not to be credited on his oath.

Lord NORBURY charged the jury, and recapitulated the evidence, which so strongly demonstrated the guilt of the prisoner, as to render it unnecesary for his Lordship to make any observation.

The Jury retired for a few minutes, and returned their Verdict---*Guilty.*

The *Solicitor General* addressed their Lordships, and said, that it became a painful part of his duty to call for the judgment of the Court, in order to connect the sentence as nearly as possible with the conviction.

The *Clerk of the Crown* then asked the prisoner, if he had any thing to say, why sentence of death should not be pronounced against him.---The prisoner made no reply.

Lord NORBURY, in an awful and impressive manner, pronounced the sentence.

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SAME DAY.

Maurice Murphy was indicted for felony and robbery, committed on the highway, on the 19th December, 1810.

WITNESSES ON THE PART OF THE CROWN.

Edward O'Maher, Esq. examined by Serjeant Moore.

Q. Where do you live?—A. In this county.

Q. Were you driving in your carriage on the 19th December last?—A. Yes; accompanied by my brother, and two servants.

Q. Did you meet with any thing that obstructed your travelling?—A. Yes; at about 2 or 3 o'clock in the day, I observed two men standing near the river; they came towards the carriage, and one of them presented a blunderbuss, and desired me to stop, and to deliver what money I had—I handed them out my pocket-book, containing bank notes, to the amount of 11*l.* 2*s.* 5*d.*

Q. Did you know either of the men?—A. I did not.

Q. Turn round to the bar?—A. I don't see the man who robbed me. The prisoner at the bar was not the man who came to the window.

John Heffernan, examined by the Solicitor General.

Q. What employment have you?—A. I live as servant with Mr. Maher, of Marvel-hill—I am his coachman.

Q. Were you driving him when he was robbed, in December last?—A. I was.

Q. How many persons were concerned?—A. Two.

Q. Would you know either of them?—A. I am sure I should. *(Witness identified the prisoner.)*

Q. Have you any doubt of the prisoner?—A. Not the least—he was the man.

Q. Was he the person who came up to the coach window?—A. No; the second man. He stood out of the road of the carriage.

Q. Do you recollect at what time, after the robbery, you were called on to point out the robber in the guard-house?—A. I do.

Q. When you went into that room, was the prisoner there?—A. He was.

Q. Did you point him out?—A. No; I was advised by Mr. Archer Buller not to point out the person, until I came out to my master. I pointed out a police-man.

Q. Have you at this moment any doubt?—A. Not the least in the world.

Cross-examined by Mr. Grace.

Nothing occurred to discredit the witness's direct examination.

Mr. *Denis O'Maher* was examined, and corroborated the evidence of his brother, the first witness.

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Here the prosecution closed.

The prisoner examined no witnesses.

The CHIEF BARON, with his usual brevity, precision, and ability, charged the Jury. He said, the indictment was so clearly sustained by evidence, that it was not necessary for him to consume the public time by making observations on the testimony of the witnesses for the Crown. The only question for the consideration of the jury was, whether the prisoner was one of the two men who robbed Mr. O'Maher. He (the prisoner) had been positively sworn to by the servant, and it was for the jury, under all the circumstances of the case, to draw their conclusion. The prisoner has called no witnesses, and therefore, if they believed the coachman, the guilt of the prisoner, in point of law, lies established, and they ought to find him guilty.

The Jury found their verdict—*Guilty.*

SAME DAY.

Henry Hogan was indicted, under Lord Ellenborough's act, for firing a gun at Lowry Williamson, loaded with ball, with intent to kill. There were two other counts in the indictment, founded on the same statute.

WITNESSES PRODUCED ON THE PART OF THE CROWN.

Lowry Williamson, examined by the Solicitor General.

Q. You are a soldier belonging to the Monaghan Militia?—A. I am.

Q. Do you recollect having been out on duty, on the 2d of last month?—A. I do; there were six of us and a corporal; we were under the command of a permanent serjeant.

Q. Do you recollect having fallen in with a person of the name of Henry Hogan?—A. I do.

Q. Do you observe him in court?—(Witness identified the prisoner.)

Q. Was there any person with him?—A. There was another one of them was armed with a blunderbuss, and the other with a fowling piece; Hogan had the blunderbuss.

Q. Did either of them do any thing?—A. They both came up together, and when just coming forward towards me, the man who had the fowling-piece snapped it, and burned priming.

Q. How was it pointed at the time?—A. I am not certain. The fowling-piece was directed towards the party.—I then took hold of him, and said, he was my prisoner, and I shouted for assistance from the guard. The blunderbuss was against my left breast, but I can't say whether he snapt it or not.

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Q. Did you try if the piece was loaded ?—A. The blunderbus was loaded.

Cross-examined by Mr. Mac Nally.

Witness said, that he could not say that the prisoner took aim at any particular person.

Mr. *Mac Nally* said he would ask the witness no more questions. He always thought it his duty, when the indictment was not sustained by evidence, to leave the case with the court, who were counsel for the prisoner.

The CHIEF BARON concurred with Mr. Mac Nally in opinion, that there was not evidence to sustain an indictment, under Lord Ellenborough's act, and expressed his surprise, that the indictment was not framed on the White-boy act.

Corporal Hawthorn, examined by Serjeant Moore.

Witness said, he heard the prisoner damn the blunderbuss for not going off; had it done its business, he would then be contented to die;—he said, in the guard-house, that if he had the priest with him for 15 minutes, he did not care what they did with him; the guard might laugh, but if the French came, he would then be laughing at them.

Lord NORBURY charged the Jury. He said, in point of law, there was no evidence to support the indictment, and therefore they ought to acquit the prisoner.

Verdict---*Not Guilty.*

SAME DAY.

Pat. Dwyer, Edward Dawson, Wm. Ryan, John Laughlin, Pat. Corbet, Rich. Cullen, Wm. Keardy, Thomas Shea, John Dwyer, Daniel Griffin, and Wm. Dwyer, were severally indicted, under the Riot and White-Boy acts, 29 Geo. 2, cap. 12, and 15 and 16 Geo. 3. cap. 21. for assuming the name of Caravats, and for unlawfully sounding a horn, with intent to excite a riot, &c. The indictment contained several other counts, under the above statutes.

WITNESSES PRODUCED BY THE CROWN.

Patrick Carroll, examined by the Solicitor General.

Q. What employment have you ?—A. I am a Police-man; I was sent out on duty, in the month of September last, with a serjeant's guard.—There were several shots fired, at about a mile from town.

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Q. What did you do?—A. I desired the men to prime and load; as we advanced there were more shots fired, and we heard a horn sounding.

Q. At what hour of the night?—A. About one or two o'clock.

Q. Did you see any number of persons after?—A. I did.

Q. How soon?—A. In about half an hour.

Q. How many in number?—A. Upwards of an hundred on the road.

Q. Did you call out to them?—A. Yes; I desired them to stand, and give themselves up; and if they did not, that we would fire upon them.

Q. Did they stand?—A. No; they ran off in different directions.

Q. Did you pursue them?—A. I did.

Q. Did you come up to a house?—A. I did.

Q. Was there any light in it?—A. Yes; and a large fire.

Q. Did you find any men in that house?---A. Yes; about 10 or 11.

Q. Were they in bed?---A. They were in bed, with their clothes on.

Q. Did you search the house?---A. We did; one of the soldiers brought me a gun out of the corner of the room.

Q. Was it loaded?---A. It was primed, and loaded with ball, and cocked.

Q. Did you examine any other place?---A. I did; a back house, and I found the barrel of a gun and a bayonet.

Q. Do you see in court any of those men?---A. (Witness identified the prisoner) I left the 10 men in charge of the army.

Serjeant Blakeny, examined by Mr. Serjeant Moore.

Q. Were you on duty at night in the latter end of September?---A. I was.

Q. Did you come up with any people?---A. We did. We heard a great number of voices, and some shots fired, the whole night, in the direction we were going; we met upwards of an hundred persons; I ordered them to stand; they ran off; we fired at them, and pursued and took a number of them.

Q. Did you see a house near to where you met them?---

A. Yes; the house was about 40 yards distance.

Q. How many persons did you find in the house?---A. About 9 or 10. There was a large fire. We found arms, and some persons lying under a bed, and some on the bed. There was not a man found in the house that had not his clothes on; those found in the house were taken into custody, and marched into Cashel.

Q. Did you search outside the house?---A. We did, and took one man hiding in the potatoe fins; I told him I would shoot him if he did not stand.

Prosecution closed for the Crown.

The prisoners called witnesses to prove their general character.

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Lord NORBURY charged the Jury. He observed, that the prisoners were not indicted capitally, and if they believed the evidence on part of the prosecution, their guilt was complete; and they, the Jury, ought to find him guilty.

Verdict — *Guilty.*

Sentence — To be whipped, and imprisoned one year.

SAME DAY.

Henry Hogan, who was yesterday tried and acquitted, for firing a loaded gun, &c. with intent to kill, &c. was now given in charge to the Jury, and indicted for receiving a stolen blunderbuss, knowing it to have been stolen; he was also indicted, under the White-Boy act, for illegally appearing in arms by night.

WITNESSES FOR THE CROWN.

Lowry Williamson, examined by Mr. Penefather.

This witness gave the same evidence as on the former trial of the prisoner, with this addition—he said that the blunderbuss produced to him was the very piece which he found in the possession of the prisoner at the bar, on the first of January.

Patrick Gibbons, one of the guards of the mail-coach, also proved the identity of the blunderbuss; and said it was the same which had been robbed from him by the party at the turnpike-gate, on Sunday, the 28th November last.

Cross-examined by Mr. Mac Nally.

Q. You understand the use of fire-arms?—A. Yes; I have a good right—I was nine years serving his Majesty.

Q. God forbid he had many such soldiers: why didn't you make a better use of your fire arms, on the night you were attacked?—A. Because I could not get at them.

Lord NORBURY charged the Jury—he stated the nature of the offence, in point of law; and told the Jury, that if they believed that the blunderbuss found on the prisoner was that which was robbed from the guard of the mail-coach, they ought to find him (the prisoner) guilty.—Verdict—*Guilty.*

Sentence—to be whipped on the 9th February, 16th May, and 15th July.

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WEDNESDAY, FEBRUARY 6.

John Corcoran, William Crehan, Cornelius Hickey, and *Philip Codey,* were capitally indicted for an assault on James Slattery, on the 6th of November, 1810, and for firing a loaded gun at him, with intent to kill and murder, &c. and also for unlawfully assuming the name of Caravat, and appearing in arms by night.

WITNESSES FOR THE CROWN.

James Slattery, examined by the Solicitor General.

Q. Do you recollect the 6th of November last?—A. I do.

Q. Do you remember the races of Coolmoyne?—A. I do.

Q. Were you there?—A. I was.

Q. Who was with you?—A. About twenty men and boys, and neighbours.

Q. Do you recollect meeting with any person at the verge of the race-course?—A. We met a man, who desired us to turn in off the road—that if we went out we would be shot. There were about twenty men then coming home.

Q. Did you return?—A. Yes, we returned to the course, lest we might endanger our lives.

Q. Did you see any party of men.—A. About fifteen followed us to the course; they were all armed with guns, bayonets, and pistols.

Q. Did they fire any shots?—A. When they came up to the gate, they fired off shots.

Q. How far did they follow you?—A. I believe, about a quarter of a mile.

Q. At the time those men began to pursue you, had you any arms?—A. We had not; we armed ourselves with stones, when we saw that some of them fired.

Q. How many shots?—A. About 7 or 8; some missed fire. We then attacked them, and pursued them, and disarmed some of them—we took two guns, a blunderbuss, and pistol.

Q. What then happened?—A. John Corcoran then came up and gave me a stroke with a stone in the mouth—knocked two of my teeth out, and made me stagger back, and presented a gun at me, which missed fire; he presented a gun at me, while I was down in the dyke.

Q. (By the CHIEF BARON) Explain what you mean by missed fire?—A. He pulled the trigger and snapped; then another boy came up, and knocked the gun out of his hand with a stone.

Q. Did any other person then fire a gun?—A. Yes; William Crehan?

Q. Was Crehan of that party?—A. Yes.

Q. What weapon had he?—A. A blunderbuss.

Q. Did you see him on that day fire a shot?—A. I did not.

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Q. Look round, and shew me any other of the party?—A. I can't prove against any of the rest.

Q. What did you do with the guns?—A. We gave them up to the magistrate, Mr. Bradshaw, on Saturday, and on Monday we lodged examinations.

Q. Did you, or any of your friends, make any attack, until the party pursued you?—A. We did not.

Cross-examined by Mr. Mac Nally.

Q. What brought you and twenty of *de boys* to the race-course?—A. To see the amusement.

Q. Why did you return in such a body?—A. For fear of being way-laid.

Q. What's the English of the word Shanavest?—A. I can't tell.

Q. You know it perfectly well. Is it not the name of a party in this country?—A. It is.

Q. Now of the twenty of your party, were there not 18 or 19 of them Shanavests.---A. We were.

Q. You have made yourself a Shanavest without any one asking you the question. When you said *de boys*, didn't you mean the rioters?---A. No.

CHIEF BARON.---Q. What was the other party called?—A. Caravats.

Q. Has there not been a wicked and malicious enmity subsisting between those who call themselves Shanavests and Caravats?---A. They are often quarrelling.

Q. Didn't you and *de boys* expect a quarrel.---A. No.

Q. By virtue of your oath, don't you believe that some of the 19 Shanavests had arms?---A. I believe they had not.

Q. Have you not heard that they assembled with arms on another day.---A. By G---, I don't know.

Q. By the CHIEF BARON---Don't you believe the Shanavests took arms by night?---I believe they did.

Q. And the Caravats?---A. I believe they did.

Q. By virtue of your oath, has there not been a quarrel between the Shanavests and Caravats?---A. There was.

Q. If a Shanavest be determined to take away the life of a Caravat, is it not the same crime to do it by false swearing as by dashing out his brains with a stone?---A. I believe it is.

Q. Do you believe that Hickey was there?---A. He might---but witness never swore informations against Hickey.

Q. Did you come as a Shanavest for the sake of public justice, or from resentment against the Caravats?---A. (Witness hesitated).

CHIEF BARON.---Q. What was your motive?---A. Because they came to take away my life on that day, I come to prosecute them for the sake of public justice---he swore the informations before Captain Wilcocks.

Q. Don't you belive you screen yourself from justice, by this prosecution?---A. No.

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Q. (By Lord NORBURY) Had you or any of your party any fight with that body of men, before the riot at the races?---A. Yes, my Lord; one day coming from Feathard, we had a battle, the first Sunday in August.

CHIEF BARON.---What is the cause of quarrel between these two parties, the Shanavests and Caravats?---A. I don't know.

Q. What's the true reason?---A. Indeed I can't tell.

Q. So then, according to your account, I am to understand that each party attacks the other by way of defence?

Question by a *Juror*---Were the men who were concerned in the affray in the month of August, the same that were concerned at the races of Coolmoyne?---A. They were.

Q. Do you know a man of the name of Pauddeen Gar?---A. I do.

Q. He is your uncle. Was not he the principal ringleader and commander of the army of Shanavests?—A. He is a poor old man, and not able to take command.

Q. (By Lord NORBURY.) What was the first cause of quarrel?—It was the same foolish dispute made about May balls.

Q. (By the CHIEF BARON.) Which is the oldest party?—A. The Caravats were going on for two years before the Shanavests stirred.

Q. Why were they called Caravats?---A. A man of the name of Hanly was hanged---he was prosecuted by the Shanavests, and Pauddeen Gar said he would not leave the place of execution, till he saw the Caravat about the fellow's neck; and from that time they were called *Caravats*.

Q. For what offence was Hanly hanged?—A. For burning the house of a man, who had taken land over his neighbour's head.

Q. Hanly was the leader of the Caravats?—A. Before he was hanged his party was called the Moyle Rangers. The Shanavests were called Pauddeen Gar's party.

Q. Why were they called Shanavests?—A. Because they wore old waistcoats.

Nich. Saxton, examined by Mr. Prendergast.

This witness corroborated the evidence of James Slattery. His evidence was exactly similar with that given by the former witness: he gave precisely the same history of the first origin of the party of Caravats and Shanavests; and proved that all those connected in their illegal associations, had no other object in taking up arms, than to defend themselves against the attacks of each other.

Ben. Bradshaw, Esq. examined.

Q. Did you examine the arms delivered to you by N. Saxton and Slattery?—A. I did; there was one of the guns loaded.

Prosecution on part of the Crown closed.

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Witnesses examined for the Prisoner.

Rev. John Ryan, Parish Priest of Feathard, examined by Mr. Campbel.

Q. How long have you been parish priest of Feathard?—A. Eight years last October.

Q. Are you acquainted with all your parishioners?—A. Yes.

Q. Do you know a boy of the name of Hickey?---A. Perfectly well.

Q. Do you recollect the races of Coolmoyne, in the month of September?---A. I do; I was at the races on the day of the fight, and heard a shot fired in the direction the Shanavests were.

Q. Had you any official duty to perform on that day?---A. Yes; I had to baptize a child.

Q. Do you recollect whether there were many present at the baptism?---A. There were.

Q. At what hour did you baptize the child?---A. I can't exactly recollect. It was about night fall.

Q. Was the prisoner Hickey present?---A. He was one of the sponsers.

Q. Was Hickey in the house when you arrived there?---A. No; but he came in a few minutes after.

Q. (By the CHIEF BARON.) How far is that house from the race-ground?---A. Two miles by the road, and about one across the country.

Q. Are you acquainted with a man of the name of Saxton?---A. I am.

CHIEF BARON---With respect to him, you can only be asked the general question, namely, whether Saxton the witness is a man to be credited on his oath?---A. He is spoken of as a notorious quarreller, but I can't say whether he ought to be believed on his oath.

Cross-examined by the Solicitor General.

Witness said, that at the fair, he saw some of the Shanavests strike the Caravats.

Q. (By the CHIEF BARON.) Is it notorious in the parish, who are Shanavests, and who are Caravats?---A. It is.

Q. From a gentleman of your appearance and manners, I should wish to be informed what is the real cause of quarrel?---A. I never could find out the real cause.

Q. (By Lord NORBURY.) Do the feuds of those insurgents prevent their attending Divine service?---A. No, my Lord; both Shanavests and Caravats attend Divine service, indiscriminately.

LORD NORBURY.---"I wish, Sir, you could restore peace and comfort to your flock; if they would take your advice, we should have no occasion of visiting your country, at this inclement season of the year."

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SOLICITOR GENERAL resumed.---Q. Do you consider those feuds, as they are called, confined to the lower orders?---A. I think they are; I am not sure whether any respectable parishioner has joined them.

Q. Can you form any opinion whether one party is more criminal than the other?---A. I cannot; they are equally criminal; but the taking of arms is confined exclusively to the two parties concerned in those feuds.

The counsel for the prisoners closed their case, and advised them not to call any more witnesses. One of the prisoners insisted on calling one of the Jury to his character: the Juror was sworn, but gave the very reverse of a good character to the prisoner. At the request of the prisoners, some other witnesses were examined. Their evidence was not important.

The trial had proceeded thus far, when the CHIEF BARON observed a fatal error in the capital indictment.

Mr. *Mac Nally* insisted, that the prisoners should be given in chage to the Jury, and acquitted, previous to the sending up, and finding of a new indictment. The court concurred, and they were then given in charge, and acquitted of the capital indictment, but found guilty of a misdemeanor, viz. of illegally assuming the name of Caravat, and appearing in arms.

They were then sentenced to be whipped on the 11th of Feb. 11th of May, and 2d of July.

THURSDAY, FEBRUARY 7th.

Thomas Power was given in charge to the Jury, and indicted for the murder of Arthur Malowney, at Ballybacon, on the 21st November, 1810.

WITNESSES ON THE PART OF THE CROWN.

Edward Prendergast, examined by the Solicitor General.

Q. Are you a Police Constable?---A. Yes.

Q. Do you know Thomas Power?---A. I do.---(Witness identified the prisoner.)

Q. How long have you known him?---A. As long as I know any man.

Q. Do you recollect having been called out on duty, with two others, who went to value the Tithes of the parish of Ballybacon?---A. Yes---with Arthur Malowney and George Moore.

Q. How many constables went with you?---A. Four, and the two men themselves. The day was the 21st of November last.

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Q. (By the CHIEF BARON.) How were the four men armed?---A. With guns and pistols.

Q. What was the first thing that happened?---A. When we were going through Ballybacon, there were some shots fired at us over a wall.

Q. Did you see the persons that fired them?---A. Not until after the shots were fired.

Q. Did any of them take effect on you?---A. Yes.—I received ten slugs. After the shots were fired, the persons came over the wall.

Q. How many in number were there?---A. From fourteen to twenty persons.

Q. Were they all armed?---A. They were, with guns and short pistols;---three of them fired.

Q. After the firing, what did you do?---A. We ran back to the house of Thomas Shea---the persons who came over the wall advanced, and we ran to the house of Shea for protection; I was one of the last that came up---we shut the door, and I put a small bit of stick into the bolt.

Q. What did the party then do?---A. They came up, and called out for the Ardfinnan constables to turn out---some of them got into the lower part of the house, through the window; and one of them seized my piece, and fired his pistol at me.

Q. Where was Malowney at this time?---A. He was above in another part of the house. Some time after they got into the house, Malowney was standing near me, and one of them seized and dragged him behind me; I then took hold of him, and dragged him back again---I was knocked down, and after I got up again, I saw Malowney, and some of the men striking at him on the head with pistols and guns.

Q. How many were striking at him?---A. Three or four were striking, and there were eight or nine about him---he fell on his face and hands on the ground.

Q. Was he struck when in that situation?---A. I can't tell that ---George Moore said, Go out of the way, for I believe the design is against you and Malowney.

Q. Did you make your escape?---A. I did.---The last place I saw Malowney he was lying on his face and hands on the ground.

Q. Look about the court, and say if you discover any person who was one of the party?---A. I see a man who was standing outside of the house with a gun in his hand---I mean the man in the dock, Thomas Power.

Q. At what hour of the day did the transaction take place, which you have related?---A. About one or two o'clock, to the best of my belief; some of the persons had their faces blackened, and others were disguised.

Q. How near to the house was the prisoner standing?---A. About 40 or 50 yards.

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Q. Did you ever see Malowney again?---A. I believe he was dead before I left the house---I saw him again at the inquest.

The cross-examination was not material.

George Moore, examined by Mr. Sergeant Moore.

Q. Do you recollect what happened at Tom Shea's house on the 21st of November last?—A. I do.

Q. How many persons attacked the constables on that day?—A. There could not be less than from thirteen to fourteen; every one of them was well armed—They fired on the constables—we fled to Shea's house for safety.

Q. Can you tell how soon after you were pursued?—A. In two or three minutes—some of them forced their way into the window.

Q. Who were in the room when those persons forced their way into the window?—A. M'Cabe, Prendergast, Cowan, and Malowney.

Q. What did you see them do?—A. They were all striking at Malowney, and Prendergast and Hewson were striving to save him—They were striking Malowney with their arms. Hewson told us, now was the time to make our escape.—M'Cabe got out, and I then fled as fast as I could.

Q. Were there any shots fired after you?—A. There were, when we had gotten about 70 or 80 yards from the house.

Q. Did you see the persons who fired them?—A. I did not.

Q. Did you know any of the persons concerned in the outrage?—A. I did not—I saw Malowney when I went off, and when I returned, I found him dead in the room where I had left him.

Here counsel for the Crown produced Witnesses, to show, that Hewson, one of the constables, was prevented by illness from attending to give evidence.

Here the prosecution closed on part of the Crown.

PRISONER'S DEFENCE.

Several witnesses were produced to prove an alibi. The substance of their evidence was, that, at the time Malowney, the deceased, was murdered, the prisoner had been employed in gathering dung at his father's house. In their calculation of time, the witnesses were very inaccurate, and in their account of several circumstances differed from each other.

The Rev. *David Farrell* said, that he had known the prisoner for about 12 years—that his general character for the last six years was very good, but before that period, he was subject to intoxication.

The CHIEF BARON charged the Jury.—He recapitulated the evidence, and told them, that if they believed the witnesses produced by the Crown, the indictment was sustained, and they ought to find the prisoner guilty.—But if, on the contrary, they believed the evidence given on part of the prisoner, they ought to acquit

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him. His Lordship had no doubt that their verdict would satisfy themselves, and satisfy the public.—Verdict GUILTY.

Immediately after, the prisoner received sentence of death, and was ordered to be executed on Saturday.

SAME DAY.

Michael Foley was given in charge to the Jury, and indicted for assaulting Henry Grady, a soldier, on guard, on the 11th of Nov. 1810, with intent to rob him of his firelock.

Henry Grady examined.

Q. What regiment do you belong to?—A. To the Roscommon militia.

Q. Were you on guard at Carrick-on-Suir, on the 11th of November.—A. I was; two men came up, and asked me what time of night it was.—(Witness identified the prisoner as one of them.)

Q. Had you any conversation with them?—A. Yes; they invited me to go and drink with them; I told them I would drink none while I was on duty; they then went away, and soon after returned, and again asked me to drink with them, and this man—(pointing to the Bar)—put his hand in his pocket, and pulled out silver, and desired me to go and drink myself; I said I would take neither money nor drink while I was on duty.

Q. Did they go away that time?—A. They did.

Q. Did you see them again that night?—A. Yes; in about a quarter of an hour after, they came up, and the other man said, are you on guard still? I suspected them, and told them, if they came up I would shoot them. He then seized the gun, and attempted to drag it from me—I cried out to the soldiers to come to my assistance; the other then said, pull it from the thief, pull it from him—I am positively certain the prisoner was one of the men.

Charles O' Brien, examined by the Solicitor General.

Proved that he had taken the prisoner, at about ten o'clock on the same night, and that he had found him bloody.

The Prisoner examined no witnesses.

Lord NORBURY charged the Jury—He said, that the offence for which the prisoner was indicted was not capital—that if they believed the soldier's evidence, the guilt of the prisoner was complete—Verdict, GUILTY.

Sentence.—Transportation for 7 years.

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SAME DAY.

John Lonergan was given in charge to the Jury, and indicted for an assault, with an intent to rob Thomas Hayden of a gun, at Mullinahone, on the of September, 1810.

Mr. *Mac Nally* moved to put off the prisoner's trial until the assizes, on an affidavit, stating that the Rev. —— Fox and ——, Power were material witnesses, without whose testimony he could not with safety to himself proceed to trial—that he had served those persons with Crown summonses, and expected their attendance at the ensuing Assizes. The affidavit further stated, that the prisoner had been *but three days only* in custody, and therefore that he had not had time to prepare for his defence.

Sergeant *Moore* opposed the motion, on the ground that the prisoner had sufficient time since the commencement of the commission to prepare for his defence.

Lord NORBURY concurred with the learned Sergeant, and refused to put off the trial.

Mr. *Mac Nally* then said, he thought it a great hardship to force an unfortunate man to take his trial, whose witnesses had refused to attend; and that if, under such circumstances, the Jury convicted him, their verdict would be founded on *ex parte* evidence.

The Chief Baron had gone to the other court, for the purpose of expediting the business, by trying some prisoners for misdemeanors.

WITNESSES ON PART OF THE CROWN.

Thomas Hayden, examined by Serjeant Moore.

Q. Where do you live?—A. In Dublin.

Q. Had you been travelling from Mullinahone in the month of September last?—A. I was.

Q. Had you any arms?—A. Yes; a double-barrelled gun. (Witness identified the prisoner.)

Q. Did any thing happen to you?—A. The prisoner came from the right side of the road to the left—threw himself off a mule he had been riding on, and said, you must give me that gun—I said I would not; he then said, by G— he must have it, and at last he took it out of my possession; he then went to the side of the road, and put the gun across his knees---I had a double-barrelled pistol, which I got out of my pocket, while he was standing at the ditch; I cocked it, and attacked the prisoner, and got the gun back again; I have not the slightest doubt in the world of the prisoner being the man.

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Cross-examined by Mr. Mac Nally.

Q. Is this the first time you appeared in the character of a prosecutor?---A. It is not.

Q. Are you the celebrated Mr. Thomas Hayden, who prosecuted at Kill?---A. I am.

Q. I know Dean Stevenson---do you recollect the question put to the Dean on that occasion?---A. I do.

Q. Did he not swear that you were not entitled to be believed on your oath?---A. Something like that.

Q. By virtue of your oath, don't you believe the Dean swore truth?---A. I think he might be mistaken.

Q. What did the Jury believe?---A. They acquitted him.

Q. Did you ever prosecute a man of the name of C——?---A. Yes; he was tried and convicted.

Q. By virtue of your oath, was he not acquitted?---A. He was not.

Q. Were you ever plaintiff in an action for defamation?---A. I was.

Q. The action was brought for accusing you of perjury.

Lord NORBURY.---Mr. Mac Nally, have you done with this witness?---A. I protest to God, my Lord, my black-ball is out; the counsel for the Crown may white-wash the witness, if they can.

Q. (SOLICITOR GENERAL) Did you ever see the prisoner before? A. I never saw him, either before or since, till last Thursday; Mr. Fox told me, that the prisoner would give me 30 guineas, and submit, provided I did not prosecute him.

John Oldice, examined by the Solicitor General.

Q. You have been sworn as Constable to attend the army?---A. I have.

Q. Did you ever see the prisoner in the guard-house?---A. I did.

Q. What did you hear him say?---A. He whispered me that he would lodge a sum of money, if I would get Mr. Hayden to drop the business---he would pay 100l.

Cross-examined by Mr. Campbell.

Q. Did you go to see Miss Lee Sugg lately.---A. No.

How much did you give that lady to compound a felony?---A. I gave her 64l. for the purpose of discharging that business at the assizes.

Q. Why did you offer that sum?---A. Because your friend there, Mr. Mac Nally, told me I would save myself a sound whipping---*and I would rather be hanged forty times, than whipped once.*

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Q. The crime was an assault to commit a rape?---A. Upon my word it was.

Wm. Toban, a bailiff, was sworn, to prove that he had served Crown summonses on the Rev. —— Fox, and Mr. —— Power.

Lord NORBURY charged the Jury.---His Lordship minutely recapitulated the evidence, and said, he would leave the prisoner in the hands of the Jury, whose province it was to draw their conclusion from the facts stated by the witnesses.

Verdict---- *Guilty.*

Sentence and judgment were immediately passed.

When the prisoner was asked by the clerk of the Crown if he had any thing to say, why judgment of death should not pass against him; the prisoner said, it was a hard case that a man's life should be taken away on such evidence as Hayden's, who would swear any thing for 100l. He said he was willing to die, but he was innocent of the crime.---He was under a rent of 300l. a year, and prayed for a long day to settle his affairs on his children.

SAME DAY.

Timothy Dwyer was given in charge to the Jury, and indicted, under the 15th and 16th of the King, for feloniously assaulting the dwelling house of William Kilfoyle, on the night of the 8th October, 1810. And also for sending a threatening letter, and for exciting tumultuous risings.

WITNESSES ON PART OF THE CROWN.

William Kilfoyle, examined by Solicitor General.

Q. Were you at Slane, on the night of the 8th of October last? A. I was.

Q. Did any persons come to your house on that night?---A. There did; *(witness identified the prisoner,)* that man, and three more

Q. Had they arms?---A. They attacked the door with stones; I had butter in the barn, where I was; I came up, and looked over the door.

Q. Had you a full view of the dwelling-house door?---A. I had. One of them said, take this paper and put it on the door; and the prisoner put the paper on the door.

Q. They didn't see you?---A. No; the barn door was locked outside.

Q. Are you positively certain, that the man you call Timothy Dwyer, was the person who put the paper on the door?---A. I am. (Paper produced.)

Q. Is that the paper?---A. I can't tell positively; to the best

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of my belief it is.---Q. Have you any ill will to the prisoner ?---A. Not much.

Cross-examination---not material.

Joan Tobin Kilfoyle examined.

Q. You are the wife of the last witness ?---A. I am.

Q. Do you recollect the night your house was attacked ?---A. I do; I saw a paper on the door in the morning, and I took it down, and brought it to the parish Priest; and he said I ought to take it to Mr. White, a Magistrate, or to some other Justice of Peace.

Q. Did John Lanergan read the paper for you ?---A. He did.

John Lanergan called, and examined.

Q. Did that woman give you a paper to read ?---A. She did.

Q. Would you know it again ?---A. I would.

Mr. White called, and examined.

Q. Did that woman give you a paper to read ?---A. She did.

Q. Is that it ?---A. It is.

(Read the Paper.)

"I desire you, William Kilfoyle, to send back the furniture you have of the Shangers, without any charge, and some money to bear the expenses he has been at; or if you don't, your house and place will be burned and your cattle houghed without a doubt."

Signed,
Captain Shanavest."

Prosecution closed.

The prisoner called no witnesses---except one, to character."

Lord NORBURY charged the Jury. After minutely recapitulating the evidence, he observed, that the prisoner had called no witnesses; and therefore if they, the Jury, believed those examined on part of the Crown, they ought to find the prisoner guilty.

Verdict---*Guilty.*

Judgment and sentence of death was, immediately after the Jury having returned their verdict, pronounced by Lord Norbury.

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SAME DAY.

James Lang was given in charge to the Jury, and indicted for the murder of David Laughman.

WITNESSES ON PART OF THE CROWN.

Michael Laughman, examined by Sergeant Moore.

Q. Did you know a man of the name of David Laughman?—A. I did; he was my brother.

Q. Is he living or dead?—A. He is dead.

Q. Were you at the last fair at Cahir?—A. I was.

Q. Was your brother there?—A. He was.

Q. What happened to your brother on that day?—A. He was standing in the street of Cahir, in the evening of the Fair day, when James Lang gave him a desperate blow of a wattle; there five persons in company with James Lang.

Q. Who was the first that struck your brother?—A. James Lang; my brother had done nothing to provoke him.

Q. Was he knocked down?—A. A post kept him from falling.

Q. Did he get more blows than one?—A. He got two kicks in the belly, and two strokes of the wattle.

Q. How did he get the kicks in the belly?—A. Standing up.

Q. Who gave him the kicks in the belly?—A. The prisoner.

Q. Had Lang any ill-will towards him?—A. He had not—he did not see him before that day.

Q. What did Lang say?—A. He came running down the street, and said—"here is Lang," and then gave my brother two blows with a wattle.—He lived only from Friday evening till Monday morning, and he never got off his bed after.—He was wounded in the belly—it had a red mark.

Q. Point out James Lang, if you see him in Court.—(Witness identified the prisoner.) I am sure that is the man.

Cross-examined by Mr. Campbell.

Witness heard that there was a fight at the Fair; he did not know that his brother was in a great passion—his brother had had no quarrel with Lang, or any one else.

Thomas Guyrey, examined by the Solicitor General.

Q. Were you at the Fair of Cahir?—A. I was.

Q. Did you see David Laughman there?—A. I did.

Q. Did you see any thing happen to him there?—A. I saw James Lang coming down the street---he said, here is Lang, and he gave Laughman two or three kicks.

Q. Had he a wattle in his hand?---A. He had.

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Q. What did he do with it?—A. He made two strokes at Laughman.

Q. Did he fall?—A. He staggered back, and a post kept him from falling.

Q. How long after did he live?—A. From Friday till Monday.

Q. Did David Laughman give any provocation?—A. He never found it out.

Cross-examination not material.

Richard Daveran examined.

Q. You are a Coroner for this county?—A. I am.

Q. Did you see David Laughman in the month of last?—A. I saw him dead—he had some white and red marks on the pit of his stomach, which seemed very much raised out.

Here the Case closed for the Crown.

WITNESSES ON THE PART OF THE PRISONER.

Mary Maher, examined by Mr. Campbell.

Q. Were you at the fair of Cahir?—A. Yes.

Q. There was a fight there on that day?—A. Yes.

Q. How many were engaged?—A. I don't know—I saw David Laughman come up to James Lang—Laughman said, what made you abuse my brother—Lang said, do you want satisfaction? Laughman said, yes; and he gave Lang two strokes across the ear.

Cross-examined by the Solicitor General.

Witness said that Lang did not say a word till Laughman struck him first—the fight began at the Church—did not hear the prisoner say, "Here's Lang."

The first witness, Michael Laughman, was re-examined, and contradicted the evidence given by the last witness.—Verdict, GUILTY.

Judgment and sentence of death was immediately pronounced.

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SPECIAL COMMISSION,

BEFORE THE RIGHT HON. LORD NORBURY,

AND THE RIGHT HON. S. O'GREADY.

WATERFORD, SATURDAY, FEB. 9, 1811.

Mr. Kernan very much regrets that he was absent from court, on the evening when the Chief Baron opened the Commission at Waterford. Owing to this circumstance, he is prevented from laying before the public, the admirable speech of that able and constitutional Judge.

INDICTMENT.

Thomas Blake, Thomas Brien, Thomas Mahony, John Butler, John Connolly, John Dowley, and *Patrick Baker,* were given in charge to the Jury, and severally indicted, under the White-boy acts, 15 and 16 Geo. III. for compelling John Flahavan, by threats and menaces, to quit his farm; and also under Lord Ellenborough's act, for an assault on the said John Flahavan, by firing a gun at him, loaded with ball, with intent to kill him. They were also charged on several other indictments.

Mr. *Serjeant Moore* opened the prosecution with stating, that it had been customary, and indeed was a necessary duty, upon occasions like the present, when the offences of the country called for the enforcement of a code of laws, not resorted to in the ordinary administration of justice, to make the particular case the medium of explaining to the public at large the nature and objects of those laws;—their sanctions, penalties, and powers, and, with due care, to avoid all statements which could aggravate the charges against the persons accused. Those have ever been considered as suitable opportunities, for general observations upon the existing disturbances, and the remedies which may be resorted to, for their correction; but this part of his duty he should reserve, until he had first briefly stated to the gentlemen of the Jury the particular facts, which, if proved, (as he conceived they would be most distinctly) went to constitute the several offences, with which the seven prisoners at the bar stood charged before them.

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And here he observed, that the indictments, in the present case, imputed to the prisoners, (and the evidence, if believed, would substantiate against them) almost every capital offence, which a tumultuous assemblage of armed persons can commit, against the White-boy and other acts, enacted to prevent and punish unlawful risings of the people; and which acts, the very insurrection itself has revived and forced into operation. The prisoners are charged with having, in a tumultuous manner, assaulted and injured the habitation of Edward Flahavan, the prosecutor; with having forcibly, and by threats and menaces, caused him to open the door of his dwelling-house; with robbery of fire arms; with inflicting cruel corporal punishment upon the prosecutor, and his nephew, John Connor; with having administered an unlawful oath; and with attempting to compel, by force and intimidation, Edward Flahavan to quit his farm, abode, and lawful occupation. All these accumulated offences, being but the several branches of one solitary transaction, and the frightful guilt of a single visit, and forming in themselves a complete catalogue of the crimes, the frequency and enormity of which called for the issuing of the present Special Commission.

He then stated, that the dismal tale that would be related to the Jury, upon the oaths of Flahavan and Connor, to support the preceding charges, was to the following purport; namely, that the prosecutor, Edward Flahavan, had lately become tenant to two farms in the county of Waterford, and having been once, before the transaction now under consideration, beaten, for having taken them, and threatened with still further outrage, by the insurgents, if he continued to occupy the lands; he had used the precaution of procuring his nephew, John Connor, to reside with him, and had given him a pistol, and some ammunition, with the approbation of a magistrate, for their protection; that, in this state of imperfect security, and painful vigilance, the house of Flahavan, situate at Ballyduffe, was attacked, between the hours of seven and eight o'clock, in the evening of Tuesday, the 20th of November last, by a party of armed insurgents, who either forced the door, or caused the persons within to open it, under terror of the consequences of refusal, or resistance. That a party of eight persons, assuming the name of, and calling themselves, Caravats, rushed into the house, armed with pistols, a sword, and *alpine sticks*. Here the learned Serjeant stated the *alpine* stick to be an instrument of punishment, used by the Caravats, and was, in fact, a young plant of ash, pulled up by the roots, the size of which depended upon the strength of the ruffian who had torn it from the earth; and when the fibrous parts of the root were cut off, the knob remaining at the end, made it a most formidable, and, no doubt, frequently fatal weapon, in the hands of the robust ruffian, who was armed with it; the etymology, however, of the word *alpine* he had not yet been able distinctly to ascertain. Thus armed and prepared, for the furtherance of their system, by either inflicting death, or inspiring terror, this ferocious groupe first assailed

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Connor, who had bravely endeavoured to defend his master, by snatching up his pistol, and snapping it, without effect, at the party; but being soon disarmed, and brought to the ground, with repeated blows, they flogged him, in the most barbarous manner, with the *alpine* sticks, and wounded him severely with a spade. In the mean time, Flahavan seeing them engaged with Connor, had fled to his bed room, and vainly thought to have escaped through the window; but his retreat was there cut off by two of the party outside, who had been posted there as centinels, for the purpose.—The wretched victim of their savage resentment then attempted to conceal himself in the chimney of the bed room; but he was soon discovered, and conducted by two of the party (one of whom assured him, on his honor, that he should not be injured) to the outer door of the house, where he was beaten, with the *alpine* sticks, in a manner too shocking for minute description; and, as if to aggravate cruelty, by dishonor, the faithless miscreant, who had pledged himself for Flahavan's protection, closed the atrocious scene, by kicking and trampling on the body of the prostrate object of his treachery.—They then dragged Flahavan into the house, and administered an oath to him, that he should give up both his farms the next morning. Whilst they were thus engaged, in punishing and swearing Flahavan, Connor, who lay for a considerable time subdued and exhausted, seeing a favourable moment, by a critical effort of his remaining strength, effected his escape, through the window, and when the party found he was gone, they became alarmed, and fled; and probably, but for this occurrence, they would have proceeded to the commission of outrages, still more fatal in their consequences. This was the general outline of the case, which it was by no means his wish to colour or describe in any other terms, than such as the strictest investigation of the facts would justify; and the Jury would do him the justice to recollect, that he had not used a single expression, to impute guilt to the prisoners, or to accuse them of this atrocious outrage, other than by stating them to be charged with it in the indictments. Let the rest come from the witnesses; and happy will he be, to hear the verdict of acquittal, if the prosecutors, whilst they relate the melancholy history of their sufferings, shall be enabled to say, with pure consciences, that the prisoners at the bar were not the cause of them.

The learned Serjeant then said, he would now say a few words upon the general state of the disturbed counties; the nature of the association, out of which the present disturbances have arisen; the extent of the danger, and the adequacy of legal remedy, to meet the mischief; and for himself, after much consideration of the subject, with some experience of the different systems, which insurgents have from time to time pursued in Ireland; from all he could learn from others, or observe himself, frightful as was the actual state of this, and of some neighbouring counties, at this moment, with the lower orders of the people,

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rapidly acquiring arms, and the upper orders as rapidly losing them, still he had no hesitation to say, (and he trusted it would afford some consolation to those, who might be terrified at the appearance of things) that *his decided impression was, that these outrages were as yet unconnected with foreign agency; and that the associations of the insurgents had not hitherto assumed the character of treasonable conspiracy;* but he would go no further—he would not willingly anticipate; he would not say to what evil purposes an overgrown banditti, unlawfully associated, formidable from their excesses, and having one common union in their criminality, might ultimately be perverted; but he would say, (and he hoped it would rouse the country to timely exertion, to put them down) that, at present, the insurgents were nothing more than a lawless ruffianly horde, armed to a certain extent, and confederated for the purpose of legislating for their timid or indolent neighbours; assuming a dominion over property of every description, and particularly with regard to the letting of lands; they force the labourer from his work;—the tradesman from his occupation—the farmer from his lands; and those of the lower orders of every description, who do not join in their system, from their abodes;—they infest the public highways, spreading terror and desolation; they, in many instances, have compelled the innocent peasantry of the country to leave their humble cottages, and agrestic pursuits, and join in atrocities of every description; and so formidable are they become, that they can bring together whole columns of robust armed insurgents, to perpetrate their evil purposes. The country through which the Commission has moved exhibits, in a great measure, the frightful picture of an *armed peasantry* and a *disarmed* gentry. In this state of things, the progress of audacious criminality is accelerated by the feeble resistance it has met with; *the country, by not opposing, has tacitly submitted to this disorganization of all the social relations;* all moral duties are in danger of being abandoned; all respect for the laws forgotten; outrage succeeds outrage, as the ordinary occurrence of every day—pillage and waste, robbery of arms, and of every other species of property, forcibly carrying away women, with intent to compel mercenary marriages, (no less than seven lately in one county); burning of houses; destroying of cattle; the violation of female chastity; murder, assassination; in a word, every species of crime is committed, in the daring, but I trust mistaken confidence, that the system of terror will prevent the injured from bringing the perpetrators to justice; and, after ages of civilization, the country exhibits many symptoms of former and returning barbarism.

The learned Serjeant then stated, that a principal, and most alarming part of the system, of those associated terrorists, was a combination against the administration of justice;—this they attempt, by threatening, and endeavouring to terrify all persons engaged in it; magistrates, jurors, witnesses, were to be intimidated from the discharge of their respective duties; but he would

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not, for one moment, entertain even the suspicion, that either the magistrates, or jurors, could forget their solemn oaths, and sacred obligations, and compromize with guilt, *to cultivate a mean and disgraceful popularity*, or procure an imagined, but deceitful security for themselves. He could not think it possible, that any man, who regarded the peace of the country, in which he was destined to live, who valued the blessings of protection to persons and property, could pause upon the choice he ought to make between order and confusion; licentiousness and obedience to the laws; or hesitate in discharging firmly and conscientiously his duty, between the midnight ruffian, and the peaceably disposed peasant;—*between the laws and the violaters of them.* But if any man shall be found base enough, either from timidity, or connivance, to sacrifice important public functions, in order *to stand favourably* in the eyes *of miscreants*, against whom every good man should be arrayed, he may be assured, that whilst his disgraceful conduct increases the general misfortune, it will not enable *him* to escape the general danger. *The crisis does not admit of temporizing—every man must be on the side of the law, or against it; there can be no middle course.*—As to *witnesses*, the attempt to intimidate them, and by that means to avoid the visitation of justice, would be found vain and fallacious. The arm of Government was stretched forth, to afford them protection; and under it, they might repose in peace and security.—The learned Serjeant said, that the Government of the country was determined upon taking the most efficacious measures, to put down this ferocious and disgraceful insurrection. It would struggle to the last, to maintain the dominion of the laws, and to prevent the country being reduced to a state of *anarchy* and *war*. In such a contest, it is easy to see where the victory will be. He was authorized to say, that the powers, and resources of the State should be put in motion, to reclaim the country, and bring it back to tranquility and subordination. No man shall have it to say, that his efforts to restore the country to peace, have not been encouraged and supported—protection, and force, and pecuniary assistance (wherever there can be no danger of its contaminating the pure stream of justice) will be at hand. All that was then wanting, was the cordial co-operation of the well disposed; without their assistance, he would indeed despair; with it, he was confident of success—success in the most honorable of pursuits, the endeavour to preserve the country from the ravages of a savage insurrection, by *the mere energy of the laws*, which have been happily termed the very life and soul of every well regulated community. He was aware, that apprehensions had been entertained by many, of the inefficiency of the laws, to repress the present disturbances; but such an *opinion could only have arisen from ignorance* of the laws; or what is worse, *neglect to put them into execution*; for his own part, he had always been of opinion, and he saw no reason now to think otherwise, *that the laws of the land alone, if duly enforced,*

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were sufficient to crush any insurrection.—The experience of some very recent, and some more remote events, had proved it, in an adjoining county, where the influence of terror had been more systematically established than in this; of thirty-eight persons indicted, thirty-three had been convicted. This is a pretty plain proof, that it is idle to think that intimidation will prevent witnesses from coming forward, where they are protected; or that jurors are to be corrupted, where every thing that they value is at stake. Of the above number, only six were to suffer capital punishment; but it may be useful to mention, here, that one of these six, (and who has already expiated his crimes on the scaffold) was convicted on the written information of a person, who had been murdered by the prisoner's mistaken friends, for having made that information; so that, altho' the witness was in his grave, yet his evidence remained, to convict the guilty person; this was a pretty strong instance of the efficacy of the laws, in times of public disorder. Another of those unhappy men was adjudged to the punishment of death, whose crime consisted in affixing a notice on his neighbour's door, to quit his habitation, and give up his land, under the penalty of incurring the displeasure of the Insurgents.—Will not these examples of the vigour and severity of the laws teach the misguided people, who are destroying and disgracing the country, to abandon their evil ways, and resume the occupations of peace and industry.

The learned Serjeant then expressed his regret, that all those who were now attending the Court, had not heard the very able exposition of several of the clauses of the White-boy act, which had been given yesterday, by his Lordship, the Chief Baron, in charging the Grand Jury; but as there were, no doubt, many who had not heard his Lordship, it became the more necessary that he should explain the leading provisions of that code of laws, denominated the White-boy, and other acts, against tumultuous assemblies, *a code of law peculiar to this country, and even here, tho' existing, not operative laws, unless when the public tranquility is interrupted, by frequent and formidable risings of the people*; and he repeated his opinion, that if those laws were properly understood, and duly executed, they would be found a most efficient system, for the prevention and punishment of offences against the public tranquility.—He then gave a clear and detailed explanation of the several laws in force, in times of public tumult; dividing and arranging their several powers, provisions, and sanctions, under the heads of *preventive—inquisitorial*, and *punitory*; demonstrating, that the magistrates, and other peace officers, if they would do their duty, had the most extensive powers given them, for *preventing* all tumultuous assemblies, and *nipping in the bud* every unlawful association of disorderly people.—He said, that the very assuming any *name*, or *denomination*, or wearing any *badge, not usually assumed* and *worn by his Majesty's subjects*, on their *lawful occasions*, in a riotous and tumultuous manner, or when the

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country is disturbed by tumultuous risings of the people, whether it be by day or night, and altho' no *act* be done, or outrage committed, is of itself an high misdemeanor, and punishable severely in the discretion of the Court. That further, to *prevent* unlawful and disorderly associations of the people, and outrages in furtherance of them, the Magistrates have power to summon any person, suspected of being in possession of information, of any unlawful meeting had, or to be had, or of any breach of the peace committed, or intended to be committed, by the insurgents, and *to examine* such person, on oath, and bind him over in a recognizance to prosecute; and should he refuse to give information, to commit him to prison, until he shall comply. This inquisitorial power was not only well calculated to check the evil, in its earliest and most immature stages, but likewise to detect, and bring to light, the plan and system, and to frustrate or punish the atrocities of these misguided miscreants. The magistrates are also authorized to call upon every man in the country, to assist them, in preserving the public peace under these laws, in times of tumult; the magistrate, besides his ordinary authority, is invested with the power of the Sheriff, as to calling out the public force, and posse comitatus. He is, moreover, authorized and required to *apprehend, disperse*, and *oppose* all assemblies of *insurgents in arms*; and should death be the consequence of the discreet exercise of this power, all concerned stand indemnified from the consequences. As to the *penalties* and *punishments* which await those who do any *act*, in furtherance of the system of those unlawful assemblies, they are so numerous, and have been so often, and so well explained, that it would be waste of the public time, now to enumerate, them. Who is it that can now be ignorant, that any attack upon the habitation of any person, or any entry into any dwelling house, procured by *force* or intimidation, that the robbery of arms, or other property, stealing of horses, sending threatening notices, attempting to regulate the price of *land*, or the rate of *labour, tithes*, or other *dues*; attempting to compel any person to quit his *occupation, farm*, or place of *abode*; who is it that can now be ignorant, that these and many other offences, if committed by a tumultous assembly, and when the country is disturbed, are punishable with death? Nay more; it cannot be too well impressed upon the minds of every person, that any man who shall *harbour, conceal*, or *assist*, or who shall supply *arms, ammunition*, or *horses*, to the persons concerned in these outrages, incurs, by so doing, the penalty of death; so that by these laws, the offender is cast forth from human society, like the first murderer, with a mark set upon him, that no hand shall succour, nor any house afford him shelter. In addition to those severe laws against tumultuous risings, and unlawful confederacies, he would mention another highly salutary statute, which, perhaps, was not so generally known, an act of the reign of George II. which made the very *demand* of arms, accom-

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panied with force (altho', in fact, no arms should be given up or taken away) a transportable felony; and when the insatiable propensity of the lower orders of people, in this country, to obtain possession of arms, is considered, he thought it highly desirable that it should be known, that there exists such a statute, making it so penal, even to *attempt to get possession of arms*, altho' no robbery, or asportation of them, shall have been committed.—The learned Serjeant then asked, emphatically, *were not these laws strong enough*, if enforced by the magistrate, with zeal, and impartiality, for the preservation or restoration of the country's peace and tranquility? Do they not, in God's name, arm the magistracy with sufficient powers? Who can say they do not, but the man, who can conscientiously say he has tried them, in all their vigour. And where is the man, that can say he has. Let the country then rouse from its criminal apathy. Let it put the laws in force, and avail itself of the sincere disposition of Government, to give them every assistance to protect the well-disposed; to punish the guilty; and to reform and reclaim the misguided people. The united powers, and energies of the laws, the magistrates, and the Government, must speedily extinguish this alarming insurrection. To prove this, the learned Serjeant quoted the precedent of other Special Commissions, which had, within these few years, been held in counties still more disturbed than this now is; and pointed out, in strong and impressive language, the happy effects which had resulted from them. He had known all the province of Connaught (with the exception of two counties, and one of those not quite free from the infection), in a state of open insurrection; yet the firm administration of the law restored it to peace. The Judges had then to travel, with a strong escort of dragoons, through a country, that might be said to be up in arms, and bodies of armed ruffians, on the hills, on either hand; but such was the value and effect of a decisive and vigorous execution of the laws, that the very succeeding assizes, the Judges were enabled to travel through that country, without any escort; the same means have more recently restored other disturbed counties to a state of perfect tranquility.—Under such circumstances, was it necessary for him again to repeat, that the laws, duly administered, with the zealous co-operation of the magistrates, and well disposed of all descriptions, would be competent to the tranquilizing of this county. For his own part, the learned Serjeant said, he did not give up the cause of the country, or the vindication of the authority of the laws, alarming as appearances were; and he hoped the day was not distant, when he should have to congratulate the county of Waterford, on the return of the deluded peasantry to their former, and he might almost say, proverbial, habits of industry and peace. But should his expectations, in that respect, be unhappily disappointed; should the insurgent ruffians persevere to display the standard of tumult and terror; should the peaceable inhabitants continue to be disturbed in the enjoyment of their

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properties, and in the pursuit of their industry, and their personal safety threatened; should the robbery of arms, the destruction of property, and the desolation of the country, be any longer systematically pursued; the insurgents might rely upon it, that Special Commission, after Special Commission, would come down, month after month, until the country was reduced to a state of due obedience to the laws, and this daring insurrection effectually extinguished and put down.

WITNESSES ON THE PART OF THE CROWN.

Edward Flahevan, examined by the Solicitor General.

Q. Where do you live?—A. At Ballyduff, in this county.

Q. Did you take any land in this county?—A. I did; two farms.

Q. Were you annoyed in any manner by the Caravats?—A. I was attacked by them.

Q. Did you receive any injury?—A. I did; Major Cole gave me permission to keep arms for my defence.

Q. What happened to you?—A. The Caravats came to me on the 20th of November last, at about seven o'clock in the evening.

Q. Was it light or dark?—A. Dark.

Q. Were you at home?—A. I was sitting at the fire, beside my family.

Q. Was there any other man in your house?—A. John Connor, a nephew of mine.

Q. What did they do?—A. They drew the latch, and fired into the door.

Q. Were they armed?—A. They were—some had pistols, and others a sword and an *alpine stick*.

Q. On seeing them, what did you do?—A. I attempted to escape, but was prevented by two men with alpine sticks, standing outside the window.

Q. After that what did you do?—A. I came back, and saw four men beating Connor severely.

Q. Had he any thing in his hand?—A. He ran down to his room for a pistol and powder-horn, but at this time they had got the pistol from him.

Q. With what were they beating him?—A. With alpine sticks.

Q. What did you do on seeing him receive this usage?—A. I ran up a fire-place, and they pulled me down—I was a long time speaking to them, and said my life was in their hands.

Q. Were there many candles lighted?—A. Yes; there were two or three in each room.

Q. When they got you out of the house, what did they do?—A. They then beat me in several parts of the body.

Q. Did any person attempt to save you?—A. My wife stuck to me all the time, and saved me from blows; I was stretched in the house, and my wife and my four children lying over me.

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Q. What were you beaten with?—A. Alpine sticks, and one man leaped on my body.

Q. Did you see any paper, in any of their hands?—A. Yes; they brought out some papers, and swore me to give up the two farms that I took; it was on a common piece of paper, and not on a book.

Q. Do you recollect having been taken after that to a place where some of those men were supposed to be?—A. I do; on Tuesday this happened, and on Friday they brought me to Mr. John Dowse Langley, a magistrate.

Q. Did you then see any persons who were there on that night?—A. I did.

Q. Did you point them out?—A. I did—there were 12 or 13 of them together, and I pointed out some of them.

Q. Turn, and see if you can discover any of those persons in Court?

[Witness identified five of the prisoners, viz. Dowley, Mahoney, Brien, Butler, and Conolly.]

Q. I now ask you, on your oath, are you positively certain that those five persons were present, when the outrage which you have stated was committed on you?—A. I am.

Q. How long do you suppose they remained in your house?—A. They were there something better than an hour. I have never been the same man since.

Cross-examined by Mr. Mac Nally.

Nothing arose out of the cross-examination to discredit the direct evidence given by the witness.

John Connor, examined by Serjeant Moore.

Q. Were you living with Edward Flahavan, in last November?—A. I was; I am his nephew.

Q. Do you recollect any thing happening to him, on the 20th of November last?—A. I do; at about 7 or 8 o'clock, we were sitting at the fire-side, when we heard a noise.

Q. Had you a light?—A. We had.

Q. What was the first thing you heard?—A. Several persons coming to the door, and one of them rapped at the door; I supposed they were not of good intent—I jumped up off the chair and went down to the room, and on my return back I saw the house thronged with fellows—I went down for a pistol, which I had for the protection of the house—I then saw about eight people in the house.

Q. Had they any thing in their hands?—A. They had pistols, a sword, and alpine sticks.

Q. What did you do?—A. As soon as I saw them, I cocked my pistol, and missed fire at them; and one of the party missed fire at me—that man's name was Patrick Baker.

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A. (Witness identified the prisoner Baker.) He was the man that snapped the pistol at me.

Q. What passed then?—A. They then ran, and got me by the neck, and one of the party twisted the pistol out of my hand, and said "flog the thief."

Q. Point out the man who did that?—(Witness identified the prisoner Conolly.)

Q. Did you say any thing to them?—A. I asked them if they intended to take my life; and they swore bloodily, that they did. They struck me several blows on the head and body—they jumped on me, and said, if I would not surrender, they would put four balls through my head.

Q. Show the man who did that?—A. (Identified Patrick Blake) I was cruelly beaten, and Flahavan was unmercifully beaten; no one would believe he was the same man.

Q. Did you get any more ill-usage?—A. Yes; some of them cried, hoist out Flahavan—they then forced him out, and one of them pledged his honor that he would not be injured—they then pulled him out to the door, and began to flog him, and one of the party leaped two or three times on his body. Then I was planted on my knees—I bounced up, and caught one of them by the neck, and I gave him a shove, and escaped out of the window—I went then to the corner of the house, and I heard Flahavan crying out to them to save his life.

Q. Was there any light?—A. There were about 10 or 12 candles; when they first got into the house, they rummaged it for arms—the mistress of the house gave them the candles.

Q. When did you next see any of those persons?—A. On the Friday following—(Witness identified the prisoners)—Flahavan and I went together to Mr. John Dowse Langley, and gave him information—we took a military party to the place where we found them—about ten of them were taken together, and they were identified the next morning.

Q. Was there any search made in your presence?—A. I was present at a search, when there was a pistol found in Dowley's house—there was one alpine stick found in the same house.

Q. Was there any mark on it?—A. Yes; it was stained with blood.

Q. Did you tell Mr. Langley that the men were there?—A. I did; it was then rather late, and I marked them out in the guard-house, on the next morning.

Q. Are you positively certain those seven men whom you have identified, are a part of the men who committed the outrage in Flahavan's house?—A. I am positively certain.

Cross-examined by Mr. Cooke.

Nothing material arose from the cross-examination.

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John Douse Langley, Esq. a magistrate of the county of Waterford, was examined, and fully corroborated the evidence of the last witness, as to the fact of the manner of his identifying the prisoners, and also in the fact of arms and an alpine stick being found in the house of Dowley, one of the prisoners.

Here the case closed on the part of the Crown.

PRISONER'S DEFENCE.

Laurence Connor, examined by Mr. Mac Nally.

Q. Do you recollect having heard of Flahavan's house having been robbed?—A. I do.

Q. What relative are you to the Prosecutor?—A. He is my uncle—the last witness is my brother.

Q. Had you any conversation with your brother about the business?—A. I had; I went to Flahavan's house, and asked my brother what call had he to those men, and whether it was he or Flahavan that knew them?—he (my brother) said that neither he nor Flahavan knew any of them but one, but that the neighbours told them that were there. "If you are certain that those are the men," said Flahavan, "let us go and swear against them, and we shall get the favour of the gentry;" and that was all the conversation.

John Connor, the first witness, was called up again. He said that his brother was a simple man—he denied the conversation sworn to by the last witness; and said, that he told him, that if he (the witness) would prosecute those men, they would all be destroyed in the country.

John Heffernan, examined.

Q. Where do you live?—A. At Terrereagh.

Q. Do you know the prisoners?—A. I know Dodd and Baker—They and I, and the rest of the prisoners, were working together, digging potatoes, on the day of the night that Flahavan was robbed—we eat our supper together off the same table. After supper I went to bed, and those men went out to-bed, with the young girl of the house. Before I went to-bed, five of us were playing cards together, single handed.

Ellen Walso, examined by Mr. Cooke.

Witness said that she knew the last witness—she knew the prisoners. They were employed digging potatoes for her father, Patrick Walsh, on the day that Flahavan was robbed. Between ten and eleven on that night, the prisoners went to-bed together in the barn—the hasp of the door of the barn was fastened with a stick—she put the stick into the hasp when the prisoners went to-

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bed, and she was the person who opened the door for them in the morning.

Lord NORBURY charged the Jury. He recapitulated the whole of the evidence, and called the attention of the Jury to the circumstance of the contradictory swearing of the two brothers, and the alibi proven by Ellen Walsh. If the Jury believed her evidence, they ought to acquit the prisoners---but if, on the contrary, they believed the evidence on part of the Crown, they ought to find them guilty.

Verdict——GUILTY.

On the motion of the Solicitor General, the prisoners were, immediately after the Jury had returned their verdict, brought up, and received sentence of death.

MONDAY, FEBRUARY 11th.

Thomas Dwyer was given in charge to the Jury, and indicted for stealing arms.

Mr. *M'Nally*, as Counsel for the prisoner, moved that he might be permited to withdraw his plea of Not Guilty, and to plead Guilty. The Court, on account of the prisoner's extreme youth, granted the motion.

Solicitor General.—We call for judgment on this man.

The Clerk of the Crown having again read the indictment to the prisoner, said, "what have you to say why sentence of death and execution thereupon should not be awarded you, according to law? If you have any thing to say, the Court will hear you; if not, hear the judgment of the Court."

Mr. Mac Nally—My Lord, the prisoner has not any thing to urge in point of law. He throws himself upon the Court, and hopes, from his penitence and youth, that he may be recommended to mercy.

Solicitor General---It is explicitly and distinctly understood that no kind of compact whatever has been entered into.

Chief Baron.---I feel, in common with every individual in the Court, most deeply shocked at the scene that has just now passed before our eyes; and yet I am not very sure that great good may not flow from it; for what must the general opinion now be among the infatuated wretches who are disturbing the peace of the country, when it shall be known, that a youth of your tender age was brought out at midnight, to rob the houses of inhabitants of their arms; you were not driven by want---you were not driven by necessity, to commit that outrage.---You were living in a plentiful country, under a mild Government, where the laws are just, impartial, and leniently administered; it was not to satisfy your wants, but your guilty desires, by robbing and plundering this house, not of the valuable articles it contained, but of arms and

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ammunition, in order that you might be enabled to commit crimes. Your guilt has been so flagrant; the case against you so manifest; the testimony of the witness so irresistible, that those by whom you were advised, and properly advised, have thought it better that you should plead guilty, and throw yourself on the mercy of the Crown, than to hear the same verdict pronounced against you by the Jury; and therefore it was that they thought it better for you to take your chance of having mercy extended to you, than submit the case to the consideration of the Jury.

I wish, Thomas Dwyer, that all the young people of the country, who have been deluded by the banditti which infest it, would take warning by your unhappy fate, and feel how impossible and fruitless it is for them to persevere in their depredations and outrages with success—that they would feel, that the peace of the country cannot be disturbed by banditti, with impunity. Can it be endured, that those persons who are labouring by day, should be legislating by night?---that those who are tilling the ground by day, should be enacting laws by night to govern the country?—that they should presume, with impunity, to say, that the man who has, by honest industry, raised a property for himself and family, should not be allowed to enjoy it; but that it must be regulated by men whose only authority is their guilt? Do you imagine that the laws will sleep, and permit those midnight banditti to enact those flagitious laws, the system of which is, to disarm the gentlemen of the country?

I call upon you to have a due consideration on what you may, and can do, to recommend yourself as an object of compassion, to make the discoveries which are in your power to make. You could not have been one of the party without having been in their secrets. I call on you, and the banditti by which this country is disturbed, and with whom you are connected, to recollect that your fate may depend on your conduct and their conduct; for, after the outrages that have been committed, and have disgraced the country, the people that look for mercy must be a peaceable and industrious unoffending people; and, therefore, young as you are, it is out of the power of this Court to afford you any expectation of mercy, unless immediate and general tranquility be restored to the country.—For mercy to an individual, under any other circumstances, would be cruelty to the country; and therefore, if mercy is extended to you, it must be because you deserve it.

His Lordship then pronounced sentence.—*Death.*

SAME DAY.

John Brown and *Maurice Quan* were given in charge to the Jury, and indicted for the offence of burglary and robbery, in the dwelling-house of Patrick Power, Esq. at Turhallow, on the 19th of January, 1810.

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WITNESSES ON PART OF THE CROWN.

Pierce Kavanagh, examined by the Solicitor General.

Q. Whose servant are you?---A. Mr. Patrick Power's.

Q. Do you recollect any thing happening in his house, in January last?---A. Yes, at about six or seven o'clock in the afternoon; it was not day light; Mr. Power was in Waterford.

Q. What happened?—A. About half past seven o'clock, four or five men came into the house, through the brew-house window; when the first man came in, he presented a gun, and he asked for our young lady. I said she was in Cahir. He said I lied; I said I would take my oath. Then one of the party desired me to follow him with a candle.—I found my master's desk was broke open, when I went in. He then desired me to go up stairs, and bring him a candle, which I did; one of them took my master's gun, and he fired a shot out of the window. When I came down stairs, he asked a glass—he opened the cellar door, and took away some bottles of spirits, and he laid the candle at the door, and then he went away—he took with him my master's gun—they were about two hours and a half in the house.

Q. Turn round, and see if you observe any persons in Court that were in your master's house that night.—(Witness identified the prisoners.)

Q. What are their names?---A. Brown and Quan—I gave information on the Tuesday following.

Q. How did you know those men?—A. I knew them from the time I came to the service—they were all armed, except young Brown.

Q. I ask you again, have you any doubt of the prisoners?---A. Not the least.

The Rev. Nicholas Herbert, examined by Serjeant Moore.

Witness said he was a magistrate, and that he took the information of the last witness—that the country was in a disturbed state. When he came to give information, he said, Mr. Herbert, I throw myself into your hands. He appeared a little afraid—his informations corresponded with the first account he gave of the transaction a—Witness took the informations on that night, but he took them again next morning.

Patrick Power, Esq. examined by Mr. Prendergast.

Q. Do you know the prisoners?—A. I know them both perfectly well.

Q. Did you lose any property?---A. Yes, I was robbed.

Q. How long have you known the prisoner, Quan?---A. He has been living on my grounds three years last March.

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Q. Had you any quarrel respecting the land he held from you?—A. On the day before the robbery there were potatoes on the ground for sale; but the people of the country were afraid to buy—I had served the prisoner Quan with notice to quit the land in September last—he refused to give up the land.

First witness called again.

Q. Did any of the prisoners say any thing about potatoes on the night of the robbery?—A. Some of them on that night said, "he sold the potatoes—he has sold the potatoes."

James Neal examined.

Q. Were you in Mr. Power's house on the night of the robbery?—A. I was; it happened between 6 and 7 o'clock—I was standing near the kitchen fire—the kitchen door was not fastened.

Q. How did the men get in?—A. By the windows—the first man demanded arms—they struck Kavanagh and me.

Q. What did they do?—A. I can't tell, because I never stirred out of the kitchen. I saw but one man—I saw no more of it—I heard a shot—[Witness could not identify the prisoners.]

Prosecution closed for the Crown.

PRISONERS' DEFENCE.

Several witnesses were examined on part of each of the prisoners, to prove an alibi. The evidence is not material.

Lord NORBURY charged the Jury, and made several observations on such parts of the evidence as were material for their consideration.

Verdict——*Guilty.*

The Jury recommended the prisoner Brown to the mercy of the Court; and Quan received sentence of death.

SAME DAY.

Thomas Whelan and *John Whelan* were given in charge to the Jury, and indicted for burglary and robbery.

By advice of their Counsel, Mr. *Mac Nally*, who had a conference on the subject with the *Solicitor General*, the prisoners withdrew their plea of not guilty, and pleaded guilty.

The trials having been now ended, the Solicitor General addressed himself to the Court, as follows:

MY LORD,—Your Lordship will permit me, as conducting, with the assistance of my learned friends, the prosecutions at this Special Commission, to address a few words to your Lordships and

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the public. I shall unquestionably have great satisfaction in forwarding, what I am sure is the wish of the Court, and of every humane and feeling man that hears me—a recommendation to his Majesty's Representative, to spare the lives of the four convicts on whom sentence of death has been passed, particularly the unfortunate youth *Thomas Dwyer*.

I wish it should be publicly known, that in doing so, I am very much influenced by a conviction, that his crime, in a moral point of view, is to be imputed to the influence of others. I am very much influenced by the decent, penitent, and contrite feeling, which seems to have inspired him in pleading guilty to the indictment; but I wish it to be known explicitly, that I am more influenced by the humane interference of the prosecutor's family, which now surround me. I do not believe that there ever has been a more grievous instance of persecution, than the prosecutor and his family have suffered from that atrocious banditti, by which the country, and particularly that part of it, has been infested. Mr. Andrews, his wife, and son, all attend the Court, this day, as prosecutors, all of whom would have given most conclusive evidence as to the guilt of the prisoner.

Mr. Andrews is an Englishman, who, in despite of the outrages committed about him, and against him, has remained firm and undaunted, in the middle of the most mountainous part of the country; endeavouring to sustain the laws, and to introduce the civilization of his own country, into this unfortunate land.

This has not been the first nor second time he was marked for persecution. Notwithstanding all, with tears in his eyes, he has supplicated for mercy on behalf of the boy; I wish it to be known, that as it is owing to his vigilance and to his courage that the prisoner has been brought to justice; so it is owing to his humanity, that a reasonable hope can be entertained of his life being saved; and, therefore, I do trust, that those ruffians by whom he has been assailed, will, instead of persevering in their associations against him, hail him as their benefactor, and remember that it is as much the effect of those laws by which the country is governed, to hold forth mercy, as to bring the guilty to justice. All those circumstances will recommend him (Dwyer) so far as the saving his life. It will be for the consideration of his Majesty's representative to say, whether it shall be thought safe to suffer so profligate a youth to remain in this country.

But I wish it to be distinctly known in the country, that my interference and that of my colleagues (I do not know whether my language is intelligible, or if I am understood by the common people, but if I am not understood by them, I hope some of the gentlemen of the country that understand the two languages, will explain it to the people) that the recommendation for mercy, to be extended towards the prisoner shall be on this condition—that if that part of the country shall remain tranquil; if Mr. Andrews, his wife, and family shall remain unmolested, and an end put to

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the plundering of arms; and if the arms lately taken by the banditti shall be restored, and the face of the country tranquil, his life shall be safe. His life hangs upon that thread; for, on the first appearance of any outrage in that neighbourhood, in forty-eight hours after it is known, it shall be my recommendation to send that boy out to instant execution. Let it therefore be known and circulated through the people, that if that boy shall lose his life, under the sentence of death he has received, his confederates will be his murderers. Let it be known that this boy's life is safe, if his country deserves it; and that if, by their conduct, they do not deserve it, the miserable victim shall be led forth to instant death.

With respect to the other convicts, the Solicitor General said, he should recommend to his Excellency the Lord Lieutenant, to retain them also as hostages for the future good conduct and peaceable demeanor of the inhabitants who lived in the neighbourhood where those prsoners resided; and he said, that he wished their relations and the public to understand, that on the first appearance of disturbance in the country, these unfortunate men should be instantly led forth to execution.

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SPECIAL COMMISSION,

BEFORE THE RIGHT HON. LORD NORBURY, AND THE RIGHT HON. S. O'GREADY.

KILKENNY, FEBRUARY 13th, 1811.

The following Grand Jury were sworn:

Hon. James Butler,
Lord Viscount Kerrin,
Sir John Blunden, Bart.
John Flood,
Michael Cox,
George Bryan,
Thomas Kavannagh,
William Bayley,
John Power,
Ralph Gore,
Patrick Dean,
George Rath,
William Morris,
Robert St. George,
Robert Flood,
William Waring,
Edward Murphy,
Richard Power,
Samuel Madden,
Peter Walsh,
Edward Waring,
Richard Ball, and
James Penefay Poe, Eqrs.

Lord NORBURY then addressed them as follows:

GENTLEMEN,

In the progress of our serious and important duties, it has been thought expedient, on the part of Government, to show a becoming solicitude for the tranquility of your respectable county. You are all conscious that you have by no means escaped that contagious malady of disturbance, which has visited you as a plague, that had its origin in the adjacent counties, from whose contiguity you have derived a dangerous portion of infection, which has in many instances disturbed your repose, and has at length broken out in outrages, most alarming in their tendency, and destructive of your peace.

You will have every assistance in checking the public spreading of this alarming disorder through the heretofore undisturbed and happy portions of your county, where every blessing of life, under a free Government, has been had in that fulness of enjoyment, to which every country in the universe that is not within the protection of the British Constitution, is of latter times unfortunately a stranger

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In addressing you at present, although I feel it my duty to apprise you of the dangers which surround you, and which you ought to avert, I do not wish to magnify them to an excess that might give confidence to our enemies, or despondency to our friends, or that might in any degree affect the cool and even tenor of your investigations in these cases that might come before you, in your capacity as Grand Jurors.

Although a most dangerous spirit of licentious outrage has gone forth, I am free to declare, that I have not been able to trace, in the great variety of cases that have occurred in our progress, any immediate contest with foreign intervention, nor any systematic conspiracy for the overthrow of our Government, with which the actors in these outrages have any direct privity, or confederated plan, that has as yet matured, to be of a treasonable nature. But any man of common sense must be aware to what desperate and dangerous purposes associated banditti of the lowest order may be converted, if familiarized to the uncontrolled habit of the plunder of arms with impunity, and, in the semblance of redressing local grievances, and of satisfying their vengeance against rival factions.

By the unfortunate want of confidence of co-operation amongst the magistrates of Tipperary, (many of whom are my nearest friends) this spirit of avowed outrage has raised its crest so high, that gentlemen of old authority and respect have lately been driven from the public affairs, in terror and dismay, with a volley of shots fired at them in the noon day, when attempting to keep the peace. Some of those gentlemen have quitted their family residence, and the county had become the theatre for bloody conflicts of Caravats and Shanavests; and out of those barbarous factions, a monster has been generated, whose hideous heads, after hissing at and lacerating each other, have at length, with combined horror and enormity, carried terror and devastation through the land, like the wild beast that has been poetically described, with the heads of an Hydra, the hands of a Briareus, and the mutability of a Proteus. The helpless and unprotected have either fled, or been sacrificed. A virtuous, brave, but solitary gentleman, was too feeble for the conflict, and the union of miscreants triumphed over the disunion of magistrates. This is a misfortune that cannot attach upon your county, and although some alarming outrages have taken place within your precincts, you have the happiness to have not only an active and spirited magistracy, that has already distinguished itself in repressing tumults, but you have a numerous resident gentry, pre-eminent for their zeal to promote civilization by their exertions, and to preserve the good order and comforts of all classes of their fellow-subjects, with dispositions and habits of kind and friendly confidence, which are unbroken and uncontaminated by petty factions or paltry distinctions of party; from that body of gentry have been selected those whom I have the honor to address upon this interesting occasion, which has been attended by such a proud proportion of your aristocracy and gentry, as would not lose by comparison with any part of the Empire. When

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the minds of such men are in unison with each other, this country has nothing to apprehend; and in calling your attention to the laws which are immediately applicable to the case, which this occasion will bring before you, you will find them adequate to the duty in which you are engaged. They have already been proved competent to meet the crimes which have been the subject of painful investigation, or clear convictions and severe punishments, in the counties that we have passed. The statute aginst tumultuous risings of the 15th and 16th of the King, has been made familiar to gentlemen of your attention and experience in many instances, and has undergone the minute consideration and legal discussion of the Judges upon former occasions, as well as on the present Commission, which has been attended by the most respectable and confidential law officers of the Crown, at the head of whom is one whose birth you may well boast of, and whose conspicuous talents are an ornament, not only to the profession he belongs to, but to the age and empire in which he lives: such is the assistance you will have in the cases that will go probably before you. The comprehensive provisions of the statute I alluded to, are likely to meet every case that is the object of the Commission, or that calls for special attention, which will be directed in its inquiries to restore this county to its tranquility, which has been disturbed by the wicked instigations of others.

Since the period when the seeds of sedition and anarchy have been sown, and scattered so widely by the French revolution, it is a matter of notoriety that, in imitation of the first movers of that revolution, seminaries have been established in these countries to corrupt, delude, and intoxicate the mind of the lower orders, with opinions calculated to overthrow the constituted authorities of the existing Government. The imitative faculties of our speculators in politics, have not been at a loss from time to time to agitate the public mind here with some popular pretext, or imaginary grievance.—*The well known practice is to keep in perpetual ferment the minds of the people of Ireland, who, though unacquainted with the motives of the agitators, are, from the ardent spirit of our countrymen, ready to be the instruments of others*, and are by nature *manus quam concilio promptiores*. In further imitation of the authors of that revolution, institutions are erected to teach and promulgate the rudiments of the science, and they have been established under the various appellations of Clubs, Cabals, Committees, or Caravats, as accident or choice may dictate, for the promotion and advancement of the general system. Some of those associations have a primary station to give light, and rule, and motion to those which are placed in a subordinate sphere, without being conscious of their measure of contributary assistance to the great principle of overthrow to ancient establishments, against which the pen and tongue of every revolutionary ruffian is put in requisition. An experiment was made on Great Britain—she shook the assailants like dew drops from her lion's mane. In Ireland the experiment was more successful, and for a time we were shaken to our centre; but in the hour of danger you triumphed; and if attempts were

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making now to form a new confederacy of mischief, you must meet it boldly; you are neither cowards nor traitors—you know how to deal with both—the ancient Germans drowned the one, and hanged the other, but no man could doubt but both ought to be annihilated. You are not mean enough to equivocate or compromise with crime. It is my duty to exhort you to the sober exercise of your temperate functions, with a rigid attention to the benignant principles of the law, having good and sufficent proof to be regulated by. I cannot avoid impressing on your minds the great responsibility of your situations. I have already apprised you that you have strong laws to act upon, although others yet stronger have lately expired. Every good man wishes that a necessity did not exist for their revival. The originating and enactment of severe laws can at all times be justified by that necessity which calls for strong measures to uphold this our best of Constitutions, against attacks that could not otherwise be combated. To those who attempt to overthrow this, the only existing palladium of civil and religious liberty, are to be attributed the obloquy and the libellous censure, on the severe remedies which licentious outrages have made necessary. Not long since, it happened, as the consequence of our late unfortunate rebellion, that during the administration of Lord Cornwallis in Ireland, the Government and Legislature were forced to adopt the dreadful alternative of martial law, and, by a legislative act, to suspend the sacred functions of Grand and Petit Juries, in cases that grew out of that rebellion. During that period, the lives and liberties of the people had not, in such cases as I allude to, the protection of such men as you, placed, as you are, in the proudest bulwark of the constitution, and as a barrier between the power of the Crown and the privileges of the people. When the Chief Governor I mentioned was gone to his grave, you know that much unfounded obloquy was cast upon him, even for the most scrupulous exercise of his awful responsibility under that law;

> The evil that men do lives after them—
> The good is oft' interred with their bones.

But the friends of Lord Cornwallis know that all the good he rendered to his country has not died with him; and that brave and humane man, above all things, ought not to have imputed to him that he

> Shut the gates of mercy on mankind,

I have been inadvertently led into the paying a tribute to his memory without hazarding the imputation to which panegyric is often liable. From such an imputation I cannot better rescue myself, than in the words of a great man of your own country, who said, that "praises are not apt to vegetate upon the tomb, or if they do, they shoot downwards, and yield but little fruit to those who plant

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them." But I trust, we never shall live to see the fatal necessity of such a court-martial law in Ireland again. Our earnest endeavour should be, by the wholesome and firm administration of justice, to avert that necessity: for that purpose, every honest man should consider, that he has a post assigned to him, upon which he should act as a vigilant and faithful centinel. If we do not abandon our post, but act like a firm phalanx, we shall be proof against all insidious attacks of our adversaries; but let every individual feel, that if he is unfaithful, or even supine and indifferent to his trust, that he may let in, through the breach occasioned by his desertion, that torrent of mischief which is ready to burst upon him from that Pandemonium of uproar, robbery, and murder, which has overwhelmed the greatest portion of Europe.

Gentlemen, the inhabitants of the fair portions of the world, which have fallen victims to their own follies and infatuations, and that now lie prostrate in the dust, were the dupes of plausible reformers, who having first defamed the constituted authorities, have led them finally to destruction. But their liberties have no such asylum as a Grand Jury. In that sanctuary our liberty is secure; and I trust, that having been raised by the virtues and cemented by the blood of your revered ancestors, the venerable fabric will endure till time shall be no more.

NAMES OF THE PETIT JURY.

Henry Baker,	Joseph Robins,
Richard Millet,	Richard Levin,
William Merry,	Edward Cullen,
Edward Laurensan,	——— Blackmoore,
Charles Burn,	Robert Robbins,
Matthew Mills,	Henry G.——

John Quinlan was given in charge to the Jury, and indicted for burglary, and robbery, in the dwelling-house of James Keneally, on the first of July, 1810.

There were several other indictments under the White-boy Act.

The *Solicitor General* adressed the Court as follows:

MY LORDS, AND GENTLEMEN OF THE JURY,

The Prisoner at the bar is charged by this indictment with one of those crimes which have been so frequently committed, for some time past, in the counties of Tipperary and Waterford, and which having been lately introduced amongst you, it has been deemed necessary to speed this Special Commission into your heretofore peaceable county. I shall not by statement anticipate the facts of this par-

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ticular case, or endeavour to pre-occupy your minds against the unfortunate person now at the bar: you will decide upon his fate calmly and dispassionately, according to the evidence which you shall hear; and you will not suffer any observations which I shall make, upon the situation of the country, to influence your judgment in pronouncing your verdict. On the contrary, it is my anxious wish, that whatever alarm you may feel for the general tranquility, may render you the more cautious and scrupulous in examining the case of the unhappy man now upon trial, persuaded as I am that the interests of public justice can only be advanced by such judicial decisions as are temperate and well considered, free from doubt, and above suspicion.

I sincerely lament, that the disturbances which made it necessary to speed this Special Commission, should have found their way into the county of Kilkenny; but, it is a great consolation to me to reflect, that the mischief has not originated amongst you; that the infection has been recently received from that adjacent county to which the prisoner at the bar belongs; and that there is every reason to hope that its progress is likely to be checked effectually by this prompt and extraordinary visitation of public justice. The zeal and activity of your magistracy, in apprehending the individuals charged with the offences which have been committed, has enabled his Majesty's Government to apply this instant remedy, before the contagion shall have been further spread, and without waiting for the recurrence of the ordinary period of the Assizes. It is also a great consolation to those who are engaged in the arduous and responsible labours of public justice, to meet a cordial and general co-operation from the gentlemen of those counties which they are obliged to visit; and permit me to add, that I feel a peculiar and individual gratification in being able to boast of such in the county of Kilkenny. I see collected around me, every man illustrious by birth and rank, every man distinguished for talent, property and character, all assembled at the great call of public duty. I know that neither distance, nor the avocations of business or pleasure, have been sufficient to detain those who were absent, when the necessity of meeting upon this important occasion was announced to them.—I am not surprised, that the unusual respectability of the audience which I address, should have called forth the approbation of the noble and learned Judge, in his charge to the Grand Jury; and I cannot but hope, that the same influence of a high resident gentry, which has hitherto protected this county from disturbance, will be found effectual in restoring that tranquility so recently and unexpectedly invaded.

But, gentlemen, the very circumstance of this mischief having been recently introduced amongst you, makes it necessary that I should call the public attention the more minutely to the nature of those outrages, to which you have for so many years been strangers, and to the provisions of that extraordinary code of laws which it has not for so long a time been necessary to enforce in this county.

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It is the object of this commission to carry into execution the enactments of the 15th and 16th of the King, c. 21. " to prevent and punish tumultuous risings of persons within this kingdom."—It is commonly called the WHITE-BOY Act, having been passed during the insurrection distinguished by that name; but, although it has continued upon the Statute Book since the year 1776, it has formed no part of the general law of the land, and is totally inapplicable and unknown to those parts of the island not agitated by public disturbances. Very shortly after it was enacted, it received this construction from the Judges of the land, that no indictment can be maintained upon it, unless it be proved upon the trial, that the county in which the offence was committed was, at the time of committing it, disturbed, in consequence of unlawful associations. In counties not so disturbed, some of the acts which this statute denounces as criminal, are not punishable at all, and others are not punishable by the dreadful sanctions which it prescribes: it is therefore at this moment not the law of the adjoining counties of Carlow and Queen's county, because they are tranquil, and it is the law of the counties of Waterford and Tipperary, because they are disturbed. Though a perpetual statute, it can only be occasionally enforced.—It sleeps upon the book, till awakened into life by the crimes of the people, and rests like a sword in its scabbard, until drawn into activity by public disturbances. What the nature of this dreadful weapon is, now unsheathed by the disturbances of your county, it is most important that you should know; for a new system of rules for conduct becomes applicable to your people, and a new system of duties has devolved upon your magistracy. I earnestly entreat your attention to both. In civilized communities, the criminal law is pointed against the frailties of human nature, and against those transgressions which, in consequence of our infirmites, individuals are tempted to commit; the punishments of such offences are accordingly proportioned to the offences themselves; and as long as the principles of social establishment are maintained, the law does not contemplate the possibility of individuals associating in confederacy against the general good. Unfortunately, however, in Ireland the disposition of the people to unlawful and tumultuous assemblies, has introduced another principle of legislation, and the Statute to which I allude has been pointed against the mischief of illegal associations, and its sanctions are calculated rather with a view to the public danger, which it is necessary to provide against, than the particular crimes which it proposes to punish. The preamble of this Act appears, indeed, with a change of names, nothing more than a history of the outrages now so familiar to us. It recites—

" That several persons, calling themselves White-boys, and others, as well by night as in the day time, have, in a riotous, disorderly, and tumultuous manner, assembled together, and have abused and injured the persons, habitations, and properties of many

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of his Majesty's loyal and faithful subjects, and have taken and carried away their horses and arms, and have compelled them to surrender up, quit, and leave their habitations, farms, and places of abode, and have, with threats and violence, imposed sundry oaths and solemn declarations, and solicited several of his Majesty's subjects, by threats and promises, to join with them in such their mischievous and iniquitous proceedings; and have also sent threatening and incendiary letters to several persons, to the great terror of his Majesty's peaceable subjects, and have taken upon themselves to obstruct the exportation of corn, grain, meal, malt, and flour, and to destroy and damage the same, when intended for exportation, and have also destroyed mills, granaries, and store-houses, provided for the keeping of corn."

Such are the associations which, under various names and pretences, have, from time to time, distracted several parts of this island: they have all had one common object, the dominion of the mob over the property of the country.—Sometimes, the rent of the land is the object of their legislation—at other times the Tythes of the Protestant Clergy—again, the dues of the Roman Catholic Pastors are regulated by their decrees—the wages of labour and the price of provisions are, at another time, to be subjected to their rule—property must not rise in value, nor circulate in possession—the landlord must keep his old tenant at the old rent—all transfers are forbidden—trade is denounced—there is a maximum established for rent, and a minimum for wages—the first law of civil society, that the value of things must find its own level, is repealed by those reformers, and their own arbitrary and capricious ordinances are established in its place—whatever is sacred, venerable, and established, they scruple not to demolish—whatever institution the wisest of law-givers or politicians would fear to touch, or would touch with a trembling hand, is undertaken by the illiterate rabble and peasantry, without scruple or reserve. They enforce the obedience of those laws by the infliction of torture, the burning of houses, the commission of murder—they are not satisfied, unless they compel others to join in their associations; and, by terror and menaces, they force into their ranks hundreds, originally innocent of their intentions—they bind those to the confederacy by the compulsory administration of unlawful oaths, and, by this shocking profanation of the most solemn of obligations, their numbers are recruited, and, at the same time, the people of the country become universally depraved. When thus associated, they do not confine themselves to those public objects which they originally professed, but become an organized banditti, ready for the commission of every offence which degrades our nature and infects society. If the guilty passions of an individual are to be gratified; if he has vengeance to satiate by murder; if he meditates the violation or abduction of a female; he finds in these confederated ruffians ready instruments, sometimes mercenaries, sometimes volunteers, to assist him in the perpetration of his crime.

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Of this we have had many instances in the progress of this commission, and others of the same description. Such are the associations which it is the object of this law to punish; such is the dreadful state of things, intolerable in any civilized society, which it is our duty to prevent from being established in this once happy county.

This law meets the principle of unlawful assemblies in the first instance, and provides, that the mere act of association, without any concomitant transgression, is a high crime and misdemeanor, subject to severe punishment.

"If any person or persons, being armed with any fire-arms, firelock, pistol, or any offensive weapon or weapons whatsoever, or or having his, her, or their face or faces, body or bodies, disguised in any manner whatsoever, or wearing any particular badge, dress, or uniform, not usually worn by him or them, upon his, her, or their lawful occasions, or assuming any particular name or denomination, not usually assumed by his Majesty's subjects upon their lawful occasions—shall rise, assemble, or appear, by day or by night, to the terror of his Majesty's subjects; every person so offending, being thereof lawfully convicted upon indictment, shall be adjudged guilty of a high misdemeanor; and the Court before whom such person or persons shall be tried, shall have power and authority to punish such offender or offenders, by fine and imprisonment, and to award pillory, whipping, or other corporal punishment, with security for the future good behaviour of the person or persons so convicted, as in the discretion of the Court shall seem meet."

By this very severe provision, the mere act of unlawfully assembling, though no other act should be committed—though not a hand should be raised by any of the party, subjects the transgressor to the ruin of a fine—the disgrace of the pillory—the miseries of imprisonment, and the torture of the lash; and it has been found necessary, upon this commission, in the county of Tipperary, to put this part of the law in force against 25 unfortunate persons, who, for the mere offence of assembling as Caravats, have been confined, in most instances, for the space of 12 months, to miserable dungeons, only to be removed from them at the stated periods, at which they are to be exhibited, naked and disgraceful spectacles, and scourged through the county whose tranquility they had menaced. I cannot believe, that if the inhabitants of this county were apprized of those dreadful penalties, they could be sufficiently infatuated to run the risk of incurring them; and yet harsh and cruel as this part of the law may appear, it is merciful, when compared with what follows.—From this section onward, every line seems written in characters of blood: it is the policy of this law, that almost every act which an unlawful assembly once associated can commit, shall be a capital felony; and you will find that several, which, in a tranquil and civilized society, would be merely trespasses, and some that would not be even so

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much, are subjected to the extreme punishment of an ignominious death.

"If any person or persons, rising or assembled in manner herein before mentioned, or in any other manner whatsoever, shall, either by day or by night, wilfully or maliciously shoot at, maim, or disfigure, any person or persons in any dwelling-house or other place; or shall knowingly send any letter, with or without any fictitious name or names thereto subscribed, demanding any money, fire-arms, ammunition, or other thing or things, or threatening to injure the person or property of any of his Majesty's subjects; or if any person or persons shall, by gift, promise or threats, procure any of his Majesty's subjects to join in any of the aforesaid offences, or by force, threats or menaces, attempt to compel any of his Majesty's subjects to quit his, her, or their habitation, farm, possession, place of abode, or lawful employment, all and every person and persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and suffer death, without benefit of Clergy."

The section which immediately follows, establishes a distinction between offences committed in the day time and those aggravated by being committed in the night.—"If any person or persons shall, at any time after sunset, and before sunrise, or before the hour of eleven in the forenoon, though the sun should be risen, maliciously assault, or in any manner whatsoever maliciously injure the habitation, property, goods, or chattels of any other person or persons, or shall forcibly or maliciously break into his, her, or their house, barn, or out-house, or shall maliciously cause any door to be opened by threats or menaces, or shall forcibly take or carry away any horse, gelding, mare, mule, or any gun, sword, or other offensive weapon, or any money, or goods, or chattels, without the consent of the owner, or shall cause the same, or any of the same, to be delivered to them by threats and menaces, all and every person or persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy."

By the section which next follows, that last recited class of offences, if committed in the day time, are declared to be high misdemeanors, punishable by fine, pillory, imprisonment and whipping—so severe is this last provision, that the mere assault at night of a man's dwelling, which seems personified as it were for the purpose of making it liable to this new species of inquiry, becomes a capital felony.

The statute then proceeds with enactments against all those who assist or abet unlawful associations, and declares, "That all and every person or persons who shall assist, abet, or succour, any person or persons to commit any of the offences aforesaid, or shall wilfully or knowingly conceal any person or persons, who have committed any of the offences aforesaid (for which sentence of death, as in cases of felony, may be awarded) every person or

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persons so aiding, assisting, abetting, succouring, or concealing such person or persons, shall, on being lawfully convicted thereof, be adjudged guilty of felony, and suffer death, as in cases of felony, without benefit of clergy."

Let it therefore be understood by all classes, that whenever the county is disturbed by unlawful associations, not merely the delinquents themselves, but all connected in privity of guilt with them, nay, all who, from mistaken humanity, harbour, protect or conceal them, are felons, subject to the pains of death: and let it be remembered, that the laws of this land are equal; that this severe and penal provision is not directed against the peasantry alone, but is pointed against every man, be his rank never so high; and that no man shall be permitted with impunity to harbour or conceal a felon, because he may be his favourite, his follower, or his tenant, or because a vulgar popularity may be acquired by such conduct. If he does so, he identifies himself in fate with that felon, and as a felon must be treated; and the public may be assured, that if such a case as I have alluded to can be made out at any time, we, who conduct these prosecutions, will have a pleasure in dragging to disgrace and punishment, the superior delinquent, who aggravates his crime by his rank, which we can never feel in bringing the deluded peasants of the country to the bar of a Court of Justice. These enactments of the 15th and 16th of the King, have been enlarged by the 27th, c. 24, which, amongst other things, declares, that even to provide instruments for inflicting bodily pain, in order to induce any person to enter into or assist in any unlawful combination, or deter any person from giving evidence, or to prevent the collection of any lawful rates or taxes, shall be a capital felony; and that if any person "Shall make use of any manner of force, or inflict, or *threaten* to inflict, any manner of bodily pain or punishment whatever, or destroy, or *threaten* to destroy, the property of any person, for any of the above purposes, he shall suffer death as a felon, without benefit of clergy." By the same statute, "If any person shall print, write, publish, or knowingly circulate or deliver, or shall cause or procure to be printed, written, posted, published, circulated, or delivered, any notice, letter, or message, exciting, or tending to excite, any riot, tumultuous meeting, or unlawful confederacy, he being duly convicted thereof, shall suffer death, without benefit of clergy."

Upon a conviction under this section, in the county of Tipperary, an unfortunate man now lies in the gaol of Clonmel, under sentence of death, whose crime was the delivery of notice from the insurgents, to a man against whom they put in force their system of terror.—Such are the principal enactments of this code against unlawful assemblies. It is a code unknown in the more civilized sister country; it is not suited to any people amongst whom social institutions are respected; it is, as I have said before, unknown even amongst ourselves, except in those districts where society is

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disorganized by the force of popular tumult. It is just to call such a system severe, but it is merciful towards the public—it is founded upon that soundest of principles, the prevention of crime, and upon the known tendency of unlawful associations to produce it; in the case of individuals, the progress from one offence to another is easy; but in the case of associated criminals, it is rapid. The very nature of unlawful associations is to inflame the passions of one man by the passions of another, and to bring into general action the collected vices of many. The man whose own temptations or frailty would be ineffectual to urge him onward in the career of guilt, whose own reason or compunction might arrest his progress, is borne along with the torrent; bad example decides him; false shame hardens him; and he is precipitated, scarcely voluntarily, and almost necessarily, into the commission of every crime. It is therefore a humane, as well as a wise system of laws, which denounces the highest punishment against every offence, of whatever character, which from its nature is likely to lead to the higher and more aggravated enormities. The excellence of this code is exemplified by the progress of those associations against which it is directed. Mischievous incendiaries first spread the spirit of discontent amongst the lower orders. The humility of their condition is stated as a grievance; every inconvenience of which they can complain is represented as an abuse. Their ignorance is played upon; their passions are fired. They confederate for the purpose of changing their condition; and money and arms being necessary in order to make them strong, they become habituated to rapine. Plunder and violence being thus familiar to them, every loyal and honest man becomes their enemy; fear renders them cruel and vindictive, and torture and assassination are the base and ready instruments of confederated and guilty ruffians. Thus, every moral principle is rapidly extinguished—every sense of obligation is lost; that consummation of vice to which an individual gradually arrives, a conspirator reaches speedily, sometimes instantaneously; and the unfortunate and deluded wretch, who, perhaps in the morning associates with others, as he is taught to believe, for the redress of grievances and the reformation of abuses, before the evening sun has set upon him, is involved in the complicated guilt of robbery and murder, covered with crimes and stained with blood.

I have said, that by these laws a new class of duties devolves upon the Magistrates. In peaceable times, if a Justice of the Peace waits until he receives information, and then takes it—if he writes his mittimus, and returns his recognizances and informations to the Crown Office, and attends the sessions and the assizes, he discharges all the duties which the exigence of an undisturbed country requires. But when the mischief of an unlawful confederacy is abroad, he is called upon for other exertions, and invested with higher powers. He must not wait for information—he must seek it; when found, pursue it; act upon it; and when he meets the assembled delinquents, he must oppose them and put them down. These are arduous duties,

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requiring exertion, and inducing fatigue, risk, and responsibility: the man who undertakes these must submit to privations; he must encounter unpopularity; he must sacrifice many of his present comforts to insure permanent security; and if he is not prepared—if he is unable or unwilling to do so, he is not a fit Magistrate for such times, and ought to make way for those who are,

The 15h and 16th of the King had in contemplation Magistrates of this active character, when it invested them with the extraordinary powers to which I shall call your attention. It enacts—

"That all and every Justice of the Peace shall have full power and authority to summon any person or persons within his jurisdiction, whom he shall have cause to suspect to be capable of giving material evidence concerning any offence committed against this Act, and to examine him, her, or them relative thereto, on his or their oath, concerning any of the offences aforesaid; and if he shall see cause, to bind such person or persons in recognizance, to appear and prosecute at the next assizes; and in case such person or persons, who shall be summoned for that purpose, shall refuse to submit to such examination, or to enter into such recognizance, it shall and may be lawful to and for such Justice of the Peace to commit the person or persons so refusing to the public gaol of the county, until he, she, or they shall submit to such examination, or enter into such recognizance.

Another extraordinary power is granted by a subsequent section—

"Be it further enacted, that any two or more Justices of the Peace, having reasonable cause to suspect any person or persons to be guilty of any such unlawful rising, assembling, or appearing, as aforesaid, or of having been in any unlawful assembly, to the terror of his Majesty's subjects, as aforesaid, or *of intending so to be*, may summon, and they are hereby required to summon before them the person or persons so *suspected* to be guilty, and bind him, her, or them over, by his, her, or their recognizance, to appear at the next General Assizes, or General Gaol Delivery, to be held for the county in which he, she, or they shall reside, to answer such matters as he, she, or they shall then be charged with, and to be of good behaviour in the mean time; and, in case of refusal to appear to enter into such security as aforesaid, that then such Justices of the Peace shall have power, by warrant under their hands and seals, to commit every such person or persons to the common gaol of the county, there to remain until such person or persons shall submit to appear and enter into such security as aforesaid, or until discharged by due course of law."

These are new and formidable powers, with which the Magistrates are entrusted in seasons of public commotion--they are made necessary by the emergency, and can only be justified by it—they militate against the humane first principle of British law, that every man shall be presumed innocent, until he shall be proved guilty. Those who framed this law, reckoned upon the knowledge which a resident Magistrate must have, in consequence of his influence, of what is

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passing in his neighbourhood, and enable him to commit to prison, upon his mere suspicion of guilt committed or intended to be committed, or of information in the power of witnesses to give: but the Magistrate is not merely armed with these powers to bring delinquents to justice—the law supposes the possibility of their assembling, in defiance of its sanctions, and in that case contemplates the Magistrate in the field opposing by force those who defy his authority—

"Be it enacted, that it shall be lawful for any Justice of the Peace, sheriff, under-sheriff, mayor, bailiff, or other peace officer, within the limits of his or their jurisdictions, taking with them the necessary assistance (and they are hereby empowered and authorised to command all his Majesty's subjects of age and ability to be assisting them) to apprehend, disperse, resist, and oppose all persons concerned in any of the unlawful acts before mentioned in this act; and if any person or persons shall happen to be killed, maimed, or hurt, in the apprehending, resisting, or opposing any such offenders, then every such justice of the peace, sheriff, or other peace officer, and all and singular persons aiding and assisting to them, or any of them, shall be freed, discharged, and indemnified, as well against his Majesty, his heirs and successors, as against all and every other person or persons, or for or concerning the killing, maiming, or hurting any such persons."

I am happy to be able to state that your county has exhibited two instances of public officers acting upon the authority of this section in the most spirited and effectual manner, and I have no doubt that to their activity in checking the mischief in its infancy, you owe it, that it has made so little progress amongst you, compared to its advances in other counties, where a similar spirit has not been manifested. You know that I allude to the gallant conduct of your High Sheriff, Mr. Izod, in the last Autumn, and to the more recent instance in which my respected friend, the Rev. Mr. Hunt, forgetting his infirmities, and disdaining the contemptible popularity which a less vigorous conduct might have ensured, left his house in the middle of a winter's night, and at the head of the King's troops, encountered and dispersed a large party of the banditti in arms. I am the more anxious to call the public attention to those circumstances, because I have heard that some men have had their minds sufficiently perverted to call in question the legality of the conduct of those gentlemen, or perhaps conceive, that by reflecting upon their zeal, they justify their own inactivity. I therefore have read the section to you, and have no hesitation to assert, under the control of their Lordships' higher authority, that whenever these miscreants are assembled in the commission of any of the unlawful acts alluded to by this section, not only the magistrates, but even every peace officer, is not only authorised but bound to call upon every man within his jurisdiction, to collect the well affected, and compel the ill affected, to assist him in dispersion of them; and if in apprehending, dispersing, resisting, and opposing them, any life shall be lost, as was the case in the two instances to which I allude, the magistrates, and those acting under them, stand

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indemnified from the consequences. These instances show that the magistrates who will look for information may find it, and show, when found, what may be done upon it. The statute of the 15 and 16 of the King also provides for compensation to those who have suffered in their persons or properties, either by the prevailing outrages, or their own zeal in support of the public peace. Such sufferers may come before the Grand Jury at the Asssizes, by petition, and upon establishing their claims, that jury is empowered and called upon to compensate their injuries by pecuniary remuneration, to be charged upon the county; thus interesting the public in another manner in supporting the laws and the general tranquility. Subsequent statutes have very much added to the strength of the code which has been framed to check unlawful associations. Laws have been passed, which make the administering or taking unlawful oaths transportable offences—and an Act, passed in 50th of the King, and which is partly a revival of the Insurrection Act, contains a provision of the greatest wisdom, to which I feel it necessary to call the particular attention of the county——it recites, "that it has happened, that persons, who have given information against persons accused of crimes in Ireland, have been murdered before trial of the persons accused, in order to prevent their giving evidence, and to effect the acquittal of the accused;" and it then enacts, "that if any person who hath given, or shall give information, or examination, upon oath, against any person or persons, for any offence against the laws, hath been, or shall, before the trial or trials of the person or persons respectively against whom such information or examination hath been or shall be given, be murdered, or violently put to death, or so maimed, or forcibly carried away and secreted, as not to be able to give evidence on the trial of the person or persons against whom such information or examination was given, the examination or information of such person, so taken on oath, shall be admitted in all Courts of Justice in Ireland, as evidence on the trial or trials of the person or persons respectively against whom such information or examination was given; provided always, that the information or examination of a witness secreted shall not be evidence, unless it shall be found, upon a collateral issue, to be put to the Jury trying the prisoner, that the person so secreted, was secreted by the person then on trial, or by some person or persons acting for him or her, or in his or her favour."

It is most important that the law should be publicly announced, and generally understood: it grows out of the prejudice which universally prevails in this county against all those who assist in the administration of justice, and the particular odium which attaches to those persons who, for giving evidence against the guilty, are stigmatised by the unpopular epithet of informer. That prejudice is the peculiar character of disturbed times, and marks the semi-barbarous state in which the people are always found, when the spirit of tumultuous association supersedes the authority of the law.—To it must be traced the many murders of witnesses, which we all re-

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member, and the establishment of that reign of terror, which, in the insurrection preceding the rebellion, often frustrated, and had nearly extinguished, the administration of justice. To check this crime, prompted equally by the spirit of vengeance and the hopes of defeating the law, this strong and salutary Statute was enacted; by force of which the written informations of the murdered man speak from his grave, and those against whom he had informed are affected by the full weight of all that he had sworn, unexplained, unqualified, and unimpeached. Nay, the very crime committed accredits the informations that had been sworn; for it is a natural presumption, that if the testimony had not been true, it would not have been necessary to murder the witness. Let it then be known to the guilty and deluded people, that this atrocious crime not only cannot impede, but actually facilitates the course of that justice, which acquires a new strength from the very effort to overthrow it. Were the witness permitted to live, he would be obliged to give his evidence in the face of his country, liable to be sifted and scrutinized by the advocate, the Jury, and the Judge. If his character could have been made questionable, by involving him in contradictions and inconsistencies—if there were any thing in his manner which might render his credit doutful—if he were such a witness as could not bear the torture of cross-examination in a public Court—if he had originally given false informations, and were disposed to retract them—all those advantages and chances are lost and taken away, by the very persons who conceived, that in destroying him, they destroyed his testimony. How often have we seen the truth elicited, contrary to all original appearances, by that open and satisfactory discussion of evidence peculiar to our inestimable jurisprudence. Nay, how often have we seen that justice disappointed (an accidental evil, necessarily resulting from the excellence of the system) in instances where the simplicity or dulness of the living witness was engaged in an unequal conflict with the professional ingenuity of a Counsel; yet even that hope of retreat is cut off by the commission of this crime; and the prosecution is assisted, and the defence is impeded, by the very crime which was perpetrated, in the vain hope of defeating the law. I wish therefore that this law should be publicly known—I wish the people to know, that on Friday last, a wretched man suffered death, in Clonmel, under this law, and was convicted upon the written information of a witness, murdered by the insurgents, after he had sworn them. I should wish also the Magistrates to recollect, that this law imposes upon them, during the existence of public disturbances, the duty of caution in the taking of informations. They ought to take down the informant's testimony with particular and deliberate precision and exactness; so that if a fatality should occur, the charge made by him may appear distinctly and unequivocally upon the written document, and not entrust the writing of so important a paper to a blundering clerk or ignorant country schoolmaster, as is too often the case in the ordinary discharge of magisterial business

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I shall only call your attention to one other legislative provision, which the misfortunes of the country have made necessary—I allude to the Arms act, passed in the 47th of the King, and amended in the 50th. It is not necessary that I should state its particular provisions, because I have reason to know that very particular instructions have been communicated to the Magistracy, as to the powers which that act entrusts to them. Its object is to disarm the deluded common people, who have of late unfortunately been possessed by a passion for obtaining arms, which it is impossible they can want for any good purpose. The Magistrates have, under that act, particular authorities, in cases where they have either sworn information, or reasonable suspicion, that arms are to be found in a particular place, and those powers I trust that they will exercise—for it is a monster amongst a civilized people, not to be endured, that the illiterate peasantry should disarm the gentry, and give law to the country. It is, I say, impossible that those arms can be required for any good purpose—What have the labouring poor to do with arms? Their arms should be the instruments of their industry and husbandry. If the county was not convulsed by their crimes, they would not require arms for protection, and for annoyance they must not be entrusted to them. When the laws are obeyed, they are the protection of the poor man, and under their shield he reposes in panoply. It is their high attribute to protect the meanest against the highest man; no man requires arms to protect his rights in a country governed by laws; but that the universal rabble of the country, with all the wild ungovernable passions that belong to uneducated man, should possess themselves of all our arms, is a state of things not to be tolerated, and which must be changed. Carry therefore that law into vigorous execution; you know that those arms have been hitherto applied to rapine and murder; you cannot say to what further mischiefs they may be applicable. I am not prepared to say, that the tumults and outrages which disgrace this county are connected with domestic treason, or the project of foreign invasion. On the contrary, as far as I have been able to enquire, I cannot discover that they are. In that opinion I may be mistaken, and do not speak with confidence; but of this I am sure, that if ever Rebellion should rear its audacious front amongst us—if ever the long meditated invasion should be effected, neither the one enemy or the other could wish to find auxiliaries more suited to their purposes than the armed rabble of this county, hardened in crimes, habituated to plunder, and familiar with blood.

I have felt it to be my duty to exhort the public of this county against the dangers which threaten them, if the progress of unlawful association be not checked; to lay before you a summary view of the strong laws in force against such a mischief, and to call upon you for a vigorous execution of them. God knows that

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I should feel this an odious duty, and one which, if I know my own heart, I am very unfit to discharge, and which nothing could induce me to undertake, if I believed that the deluded and unhappy people now in arms against the laws, were stimulated to their transgressions by those grievances under which wicked and profligate incendiaries pretend that they groan. This is the daily cant of incendiaries in another country, who know little or nothing about us, and of incendiaries in our own, who know the assertion to be false.

In the progress of this Commission, I have not met with a single case, in which the disturbers of the public peace could with truth allege the pressure of a grievance, as a palliation of their crimes. I will not admit the humility of their rank to be a grievance—inequality of condition has been the dispensation of Providence and the mandate of God, in all countries, and in all ages. If that be admitted as a principle of insurrection, society must be disorganized.

If the man below me has a right to rise against me, then I have a right to rise against the man who is above me, and universal anarchy would result from such a doctrine. The true test of a people's happiness is this—are the people governed by equal and impartial laws, and is every man free, and protected in his particular condition, be it what it may? I call the recollection of your Lordships to the class of persons whom we have been obliged, in the progress of this commission, to bring to justice—I assert, that, with one single exception, there has not been one poor or squalid object exhibited at the bar; and I am not afraid to declare, that no country in Europe could exhibit a peasantry better clad or better fed than those who, I am ashamed to say, have crowded the docks of the three counties which the Commission has visited.

This insurrection has taken place in a season of the greatest plenty—in a part of the country abundantly rewarding the industry of its inhabitants, by a luxurious and redundant produce. The class of men engaged in it are those who have, or speculate upon having, such permanent interest, and tenures in land, as it is not the custom of any other country to give to persons of their description. If there be any demagogue in this Court, who has indulged himself in the fashionable declamation, that the miseries of the people have driven them into excesses, let him look at the prisoner at the bar, and say what are his miseries?—Let him point out one man in this crowded assembly better clad, or who has more the appearance of having enjoyed a healthful and comfortable existence than that man, whom his crimes alone warrant me to call unfortunate.—If he perseveres in the assertion, let him hear the facts of this case now upon trial—he will find that the outrage with which the prisoner is charged, was committed upon the estate of the Earl of Besborough, a nobleman proverbial as a good landlord, distinguished for his moderation and liberality to his tenantry, whose paternal protection of them is exhibited by the face of the

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district, in which his property lies; a Nobleman, who does not himself reside, but whose estate is managed by a gentleman of rank and character, whom we all know, whose public spirit has improved that part of the county, in a degree which every man who travels through it must have observed, and who, with the most laudable public spirit, has brought forward this prosecution.

I repeat it again, the condition of the farmer and the peasant is in no part of the world better, and in few so good, as upon Lord Besborough's estate. Part of that estate lately fell out of lease, and after the expiration of an old demise, had increased considerably in value. Part of the tenantry, encouraged by the pernicious example of the Tipperary Caravats, rebelled against the landlord's rights.—Every thing fair and liberal was done on his part; so far from wishing to demise to middle-men and land-jobbers, the property out of lease was parcelled into three separate divisions, in order to enable the former occupying tenantry to take them: in two divisions the old tenants again took leases; in the third they were refractory, and some of them positively refused to give more than eleven shillings per acre for those lands, for which Lord Besborough had been offered forty-two shillings. He was disposed to give them the lands at a lower rent than strangers would have paid, but they relied upon the system of terror, which prevailed, and persevered in their combination, and at last the lands were set to a new tenant at more than 40s. per acre. The prisoner at the bar, at the head of an armed banditti, in the night time, attacked the habitation, destroyed the property, and cruelly outraged the person and the family of the prosecutor, whose only crime was the having, as an under-tenant, taken a part of the land from Lord Besborough's new tenant, for which the former tenants would only offer about the fourth of its value. They administered an oath to him, binding him to give up his land the following day, and to serve threatening notices upon the neighbouring farmers; and on quitting his house, exclaimed—"Did you suppose that there were no Caravats in this county?"—The prisoner is not one of those who had even the pretence of this grievance, if it were one; he lived in the adjoining county, and marched his ruffians into this, to assert the laws of the Caravats, and if possible to establish their dominion over the lives and property of its inhabitants. Let it not then go abroad that the Special Commission has been sped to enforce the laws against wretches goaded to madness by suffering, as has been audaciously stated in the incendiary prints. Let those who declaim upon the grievances of the common people of these counties, compare their condition with that of any other nation in Europe, I should rather say of that one nation into which almost all the other kingdoms of Europe have been unfortunately absorbed. Let him contemplate the conscript peasantry of France and her dependencies, torn from their families and homes, and marched in fetters from one end of the empire to the other; let him read the tremendous edict, issued within those few weeks,

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ordering, in a compendious mandate, a conscription of 120,000 youths, all born in one twelvemonth, and by one despotic word devoting the growth of a single year to the scythe of war—let him look at home for equal laws and a free constitution—let him look at the administration of justice, at the solemnity of this very trial, the institution of Juries, and all the blessings which our unhappy people might enjoy, *sua si bona norint*—if they could be taught to estimate their own advantages, and listened not to the seduction of demagogues and incendiaries; and let him look at France for iron despotism and arbitrary power—property insecure—personal liberty at the mercy of a tyrant's caprice—an enslaved press, and the very liberty of speech and thought enchained. Let us, however, learn another lesson from the awful contrast—let us remember that the absolute Government of Imperial France, has not been established merely by the military power or the gigantic talents, or the portentous good fortune of the individual who wields it: it is the offspring of popular excesses, growing into wild anarchy, and settling in despotism, of that dominion of the mob, against the first approaches of which I warn you, which it is the object of the law now acted upon to counteract, and which I trust they will be able to subdue. Those laws are strong. If unfortunately the country should continue to be disturbed, it may be necessary to look again to some of those stronger measures which were resorted to in the most unhappy periods of our history—those measures to which the noble Lord alluded in his charge to the grand Jury; the adoption of which, unless in cases of extreme emergency, every constitutional man must deprecate, but which, should the melancholy necessity occur, there can be no doubt that the wisdom of the Legislature will provide. It is the wish of his Majesty's Government to restore the dominion of the laws by the force of the laws themselves. In this great object that Government is energetic and indefatigable—and I assert that, which is well known to every active Magistrate who hears me, that every man who has required the co-operation of that Government has obtained it; and that every person who has been disposed to assist in the enforcement of the laws, has received all the aid which the resources of the Government could afford. But of what avail are the strongest laws, and the most active government, unless the gentlemen and the Magistracy of the country shall join in the exertion? It is to the influence of their residence, and of their spirited interference, that we must principally look for support. By that influence, the deluded common people will be reclaimed—by that spirit, the incorrigible offender will be brought to justice. In this county, I am sanguine enough not to entertain a doubt of the result; and I look forward with anxious expectation to the period which, I hope, is not far distant, when I shall be able to congratulate the county of Kilkenny upon the restoration of its character and tranquility.

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WITNESSES ON PART OF THE CROWN.

John Keneally, examined by Mr. Sergeant Moore.

Q. Do you know a person of the name of James Keneally?—A. I do; he is my brother.

Q. Where does he live?—A. In Ashtown.

Q. On whose estate?—A. My Lord Besborough.

Q. Were you in his house on the evening of the 1st of July last?—A. I was, in company with James Keneally, Thomas Keneally, David Keneally, and James Walsh, a little boy, and my mother.

Q. What took place on that night, at your brother's house?—A. About the hour of ten o'clock, several persons called at the gate, which was locked, and they desired the sons of bitches to open the gate—it was in the front of the house.

Q. When they called out, did any one from within give them an answer?—A. No.

Q. What did they do after that?—A. One of them climbed over the gate.

Q. What did he do?—A. Our dog ran at him, and he pointed his pistol at the dog, and missed fire.

Q. What did they do next?—A. They unhinged the gate.

Q. Did they then come forward to the house?—A. They did.

Q. *by Lord Norbury.* How many did you observe coming towards the house?—I can't tell.

Q. Were there many?—A. There was.

Q. Were there ten?—A. There was.

Q. Mr. *Sergeant Moore*—State what happened?—A. When they got through the gate, they came to the window, and the man that cleared the gate fired into the window—there were two other shots fired at the door; the party got into the house, by breaking the door—there were about twelve of them in the house—when the party got in, they said they were then in, in spite of us; they penned us, and swore us.

Q. How many shots were fired?—A. About 5 or 6 fired at the door, before they got in.

Q. What did they do in the house?—A. They had hold of me by the breast, and said, Are you the occasion of taking this land?

Q. Was the land taken shortly before?—A. It was.

Q. Who took it?—A. James Keneally. I told them I was not the person; then the captain of them told me, to clear myself, and took a book out of his pocket.

Q. What oath did you take?—A. I took my oath that I had no call to it at all;—they then went to my brother Thomas, and swore him to give up the lands.

Q. Did they ask you for your brother James?—A. Yes; but we told them he was not at home.

Q. Where was he?—A. He was on the loft concealed—they left

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a message with my brother for James and Daniel Deacon to give up the land, and they swore him to give them a notice, which they gave him.

Q. Did your brother promise that he would deliver the notice?—A. He swore that he would.

Q. Were you frightened?—A. I was—one of them struck Thomas Keneally; and he heard that person say, "I believe you thought there were no Caravats in this country." They then took us out of the house to Tom Walsh's.

Q. What did they do there?—A. They broke the windows—they then took us out of the house, but they did not say what for; it was to show them where Rakeen was—the night was so far advanced, they did not go as far as they intended.

Q. How did you get away from them?—A. There were some houses in the field—and they were linked together—and they began to leap when they heard the report of the shots—and said one of the party, "This is the light-horse men coming; we had better be off."

Q. Whose house did they then go to?—A. Mr. Cady's house.

Q. How long do you think did they remain in your brother's house?—A. About two hours.

Q. Did they call for light?—A. They did, but there was no candle lit—no light, except fires of straw.

Q. Had you since that seen any one person that was there on that night?—A. No.

Q. Would you know them again?—A. Yes.

Q. Turn round, and see if you discover any of them in court—(Witness identified the prisoner.)

Q. Do you positively swear that man was there, on that night? A. I do—but I did not know his name at that time—I saw him in James Keneally's house—he had a gun.

Q. Did you see him do any thing in particular?—A. I did not.—He was not the head man, but I am positive he was one of the party.

Q. How did you happen to see him after?—A. I saw him after, at Mr. Cox's of Castle-town, a magistrate of the county.

Q. What took you to Mr. Cox's house?—A. I was about law; that man (the prisoner) was there.

Q. Did you know him as soon as you saw him?—A. I did.

Q. Was he a prisoner there?—A. He was not.

Q. Have you any doubt that he was one of the party that attacked your brother's house?—A. No; he certainly was.

Q. Who has the management of Lord Besborough's estate?—A. Mr. Walsh.

Q. Did you tell him what had occurred?—A. I did; I also told Philip Archer, a permanent Serjeant, who was at Castle-town, that I knew the prisoner to have been one of the party.

Q. Did you charge the prisoner, as soon as you saw him, with having been one of the party?—A. I did—the permanent Serjeant

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told Mr. Cox; and on the same day I lodged informations against him, before Mr. Cox.

Cross-examined by Mr. M'Nally.

Q. You say the party brought you out of the house to show them the way to Rakeen, to be their guide on that occasion?—A. Yes.

Q. But they did not go there; you have no objection to say, that they did not know the way?—A. They pretended not to know it.

Q. Will you, as an honest man, venture to swear, what another man intends, when he does not tell you his intention?

Lord NORBURY.—You had better ask him, what right he has to know?

Mr. *M'Nally*.—My Lord, I certainly will not ask him any such question. Your Lordship will ask that question, if your Lordship pleases.

Q. (Mr. *M'Nally.*)—I put the question very mildly; you are on your oath; the prisoner is on trial for his life; it is your duty to tell the truth—it is my duty to seek the truth. By virtue of your oath, will you swear to what is passing in another man's mind, when he neither tells you what he intends or what he thinks?—You are thinking now; would you not think me a perjured man, if I were to swear to what you are now thinking?—A. I don't understand you; speak plain to me.

Q. Would you take upon you to swear to what is passing in my mind?—A. I would not.

Q. Don't you believe, that if it was not for the prancing of the horses, they would have brought you all the way to Rakeen?—A. They intended to go, and brought me part of the way, and then considered the night was too short, and went on their way to Tom Walsh's, to attack him.

Q. You did not see the prisoner afterwards, till the 27th July; one month, wanting two days?—A. Yes.

Q. You have said there was no candle light; do you recollect, at any time, on being asked the sort of men that went to the house, that either you, or your brother, said, that they were small men; you know that the prisoner is a young man of six feet three inches high?—A. I recollect having said, that some of them were small, and others large; I did not know what countryman the prisoner was, until I was told; I believe him to be a Tipperary man.

Q. Did you ever hear that there was a dispute between your brother and the prisoner, for not entertaining some Yeomen?—A. I heard something about it.

Lord NORBURY.—Q. Did the prisoner say any thing to you about not entertaining Yeomen?—A. Not to me.

Mr. *M'Nally*.—Q. Did any person speak to you about it?—A. I heard somebody say something about it, but it was not the prisoner; when he was taken into custody, and brought into the stable, by

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the guard, he said, "Sure I am not the man that was at your house?" I answered, and told him that he was.

Q. Do you recollect a reward of 100 guineas having been offered?—A. I did not read the paper offering the reward, but I heard it read; the reward gave me no trouble; I was neither pleased nor displeased, nor delighted at it; I did not feel any gratitude for the person that offered the reward, nor would I take it if offered to me; I scorn it, if it were even £20,000; but I would go as far as my life against any person that injured me, or any one belonging to me.

Q. What religion are you?—A. A Roman Catholic.

Q. Do you believe, that in your Church, it is necessary to the salvation of your soul, that you should receive the Sacrament; you go constantly to Mass?—A. Yes.

Q. And to Confession?—A. Yes.

Q. When were you last at Confession?—A. I can't tell.

Q. How long since you received the Sacrament?—(Witness did not answer.)

Q. You know you could not receive the Sacrament without first confessing your sins? A. I could not.

Q. Nor without repentance?—A. I could not.

Q. Do you know and believe it to be a rule of your Church, that the man who does not go to Confession, and repent, and receive the Sacrament, is esteemed a reprobate, and that he cannot expect to go to Heaven; will you answer that question?—(Witness returned no answer.)

Lord NORBURY.—What is the question?

Mr. *M'Nally*.—Whether it is not a doctrine held by the Church of Rome, that any man, who does not go to Confession, repent of his sins, and receive the Sacrament, is not in a state of salvation?

Lord NORBURY.—We cannot permit enquiries into the mystery of Religion.

Mr. *M'Nally*.—My Lord, I do not examine into the mysteries; I examine merely to religious tenets; I examine this witness to show, that if he neglects his religious duties, he does not, nor ought not, to receive credit from the Jury. In the Protestant Ritual, as well as in the Roman Catholic Manual, Confession, Repentance, and receiving the Sacrament, are essential and sacred Ordinances. The doctrine of Consubstantiation and of Transubstantiation, are mysteries among Christians: but receiving the Sacrament is a duty which no man, whether of the Old or New Church, can omit, with safety to his soul; no man of any religion, who shows himself as immoral as the witness on the table has done, deserves credit with a Jury. I conceive that an honest and conscientious man will, with horror and disgust, reject the evidence of such a man.

Serjeant Moore.—There is only one question arising out of the Cross-examination, namely, with respect to the reward.

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Q. Did you hear of the reward either before or after the prisoner was taken up?—A. Before.

Thomas Keneally, examined by Mr. Prendergast.

Corroborated all the essential parts of his Brother's evidence, but did not identify the prisoner.

Mr. *M'Nally* then observed, that as the Defence of the prisoner was not to controvert the facts, but to show that the witness was mistaken, as to his identity, that he would not take up the time of the Court by a cross-examination of the witness.

James Deacon examined.

Witness proved that he had received from Thomas Donellan, one of the threatening letters, which he (Donellan) had been sworn by the party to deliver to him.

Edward Elliot examined.

Witness proved that he had received the threatening letter; he also read and proved it.

Peter Walsh, Esq. examined by the Solicitor General.

Witness proved, that he was Agent to Lord Besborough; that the country had been in a state of disturbance; and that the notice of the Reward was not made public, till after the prisoner was arrested, although there had been one publication, offering it, in a Waterford Paper, on the day previous to his apprehension.

Cross-examination, not material.

Case closed for the Crown.

PRISONER'S DEFENCE.

WITNESSES ON THE PART OF THE PRISONER.

James Gready, examined by Mr. Mac Nally.

Q. Do you know the prisoner?—A. I do.

Q. Does he live in the same nighbourhood?—A. Within about four miles, as nearly as I can compute.

Q. Do you know John Keneally?—A. I do.

Q. Had you any conversation respecting the attack on James Keneally's house?—A. Yes; sure I had.

Here the Solicitor-General had the witness, John Keneally, called up again.

Question by the Solicitor-General.—Do you know James Gready?—A. I do.

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Mr. M'Nally proceeded in his examination of James Gready.

Q. What time had you the conversation with John Keneally respecting the prisoner?—A. It was before he was taken.

Q. Were there any other persons present?—A. There were three other yeomen besides myself; the conversation was about the Caravat business; J. Keneally came to the guard-house, and desired to have four men, that he might search for a man that he had set; three yeomen and I went with him, and being fatigued, we went, on our return, into Keneally's house, where we sat down by the fire; then Keneally told me that his brother lived in a roguish place; I asked where that was; he said in Ramogue; I said I had no brother living there; we then began to speak about the Caravats, when John Keneally said, I will never stop, till I hang some of them, either by fair means, or by foul; Keneally then wanted us to go to the house of Richard Walsh, and to break open the door, and take him; we refused to go and break open the door, and told him our reason, that Walsh's wife was with child, and that we would not frighten a woman in that situation; after that, we went to Walsh's house, and told him to beware of J. Keneally, for that he would certainly hang him if he did not take care of himself; we sat down in Walsh's house, and rested ourselves, and got something to eat.

Cross-examined by the Solicitor General.

Q. You are a yeoman?—A. Yes.

Q. By whose orders, or by what authority, did you tell Walsh to take care of himself?—A. No authority; I never had cause to wish him either well or ill.

Q. Did you know Walsh's character?—A. I know not any thing about him; our only reason for not breaking the door was, because his wife was with child.

John Keneally, re-examined by Mr. Solicitor General.

Witness said, that it was not to Richard Walsh's that he wanted Gready to go; it was to Andrew Archer's; he did not press them to break any door; he wanted them to go to the house of Mathew Farrell, and they refused to go there; James Walsh was the person that witness wanted to have taken, and the last witness and his companions refused to go there; since that, Walsh has fled the country, and left his cloaths and wages behind him, for which he has never since applied.

Q. Did you ever tell James Gready, that you would hang a Caravat, either by foul or by fair means?—A. No; but I told him, that whenever I did meet with any of the party, I would have them taken up by the Army.

Here the three other yeomen who had accompanied the witness, James Gready, were produced on the part of the prisoner. They

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corroborated this evidence in every essential circumstance; but, in the course of their Cross-examination, contradicted each other in the statement of several facts.

Anthony Galway, Esq. examined to the prisoner's general character, by Mr. M'Nally.

Witness said, he had known the prisoner for the period of eight or ten years; that he had never heard even the slightest imputation against his character; he verily believes him to be a well-conducted and most industrious man; he does not believe him capable of joining in any riotous or infamous association, or cabal.

Rev. James O'Neal examined.

Witness said he was Curate of the Parish where the prisoner resided; he is well acquainted with his (prisoner's) general character, and believes it to be that of a peaceable, sober, industrious man.

DEFENCE CLOSED.

Lord NORBURY, in charging the Jury, recapitulated minutely the entire of the evidence, making such observations on it, as was most material for their consideration. He concluded an able and perspicuous charge, by telling the Jury, that the prisoner had only been identified by one witness. That if they believed that witness was instigated by malice, and that he had declared, "that he would take away the life of a Caravat, (or of any other human creature) either by foul or by fair means," or if they believed that he (the witness) had been mistaken in the person of the prisoner, they would, in that case, do that justice which the benignity of our Law required from them—they would acquit the prisoner. But if, on the contrary, they believed what was sworn by that witness, there was sufficient evidence to sustain the indictment, and though it was a most painful part of their duty, yet they ought to find him guilty.

The Jury returned a Verdict of—*Guilty.*

Mr. *Solicitor General* moved for the judgment of the Court.

Lord NORBURY pronounced sentence—*Death!*

For the purpose of expediting the public Business, the Chief Baron sat, on this day, for the Trial of Prisoners, in the Civil Court, where one person only was tried. He was indicted for Ab-

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duction, and forcibly taking away a young woman. He was convicted of this offence, and received sentence of Death.

Mr. *Solicitor General*, in a speech replete with eloquence, talent, and ability, addressed the Noblemen and Gentlemen of the County of Kilkenny, on the state of the country; and here the Commission closed.

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